TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible]

No. 7.

JOHN A. HUMBIRD AND FREDERICK WEYERHAEUSER

vs.

WALDO G. AVERY ET AL.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH CIRCUIT.

[illegible]

[illegible]

(18,610)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 89.

JOHN A. HUMBIRD AND FREDERICK WEYERHAEUSER

vs.

WALDO A. AVERY ET AL.

ON CERTIFICATE FROM AND ORDER TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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1 United States Circuit Court,
District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants,
versus.
Waldo A. Avery, George B. Morley, Olean Land Company, a corporation organized and doing business under the laws of the State of Minnesota, Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, LeRoy Brooks, John B. Kehl, C. M. Hill Lumber Company, a corporation organized and doing business under the laws of the State of West Virginia, June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee, Michael Kelley, Otto Carlson, Alger, Smith & Company, a corporation organized and doing business under the laws of the State of Michigan, Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a corporation organized and doing business under the laws of the State of Minnesota, Lucina A. Sylvester, Justus H McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, S. J. Cusson, Johnson-Wentworth Company, a corporation organized and doing business under the laws of the State of Minnesota, Cloquet Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, Jethro G. Mitchell, LeRoy Brooks and W. C. McClure, as co-partners doing business under the firm name of Mitchell & McClure—Greeting:

Solicitors and Counsel.

For Complainants: Messrs. Billson, Congdon & Dickinson, Duluth, Minn.; J. B. Kerr, St. Paul, Minn.; and H. Oldenberg, Cloquet, Minn.

For Defendants: Messrs. H. H. Hoyt, M. H. Stanford, Towne & Harris, Jaques & Hudson, John G. Williams, Duluth, Minn., and S. H. Moer, New York City.

Pleas in the United States Circuit Court, District of Minnesota, Fifth Division, *in Equity Cause No. 359, and entitled* as above.

Be It Remembered, That on the 17th day of April A. D. 1900, there was filed with the Clerk of said Court, at his office at
Duluth, in said District and Division, by Billson, Cong-
2 don & Dickinson, Solicitors for Complainants, the Bill
of Complaint in said cause; which said Bill of Complaint is, in words and figures, as follows, to-wit:

Circuit Court of the United States for the District of Minnesota, Fifth Division. In Equity.

To the Honorable the Judges of the Circuit Court of the United States, for the District of Minnesota, sitting in Equity:

Your orators John A. Humbird and Frederick Weyerhauser bring this their bill of complaint against Waldo A. Avery, George B. Morley, Olean Land Company, a corporation organized and doing business under the laws of the State of Minnesota, Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, LeRoy Brooks, John B. Kehl, C. M. Hill Lumber Company, a corporation organized and doing business under the laws of the State of West Virginia, June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee, Michael Kelley, Otto Carlson, Alger, Smith & Company, a corporation organized and doing business under the laws of the State of Michigan, Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a corporation organized and doing business under the laws of the State of Minnesota, Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, S. J. Cusson, Johnson-Wentworth Company, a corporation organized and doing business under the laws of the
State of Minnesota, Cloquet Lumber Company, a cor-
3 poration organized and doing business under the laws
of the State of Minnesota, Jethro G. Mitchell, LeRoy Brooks and W. C. McClure, as co-partners doing business under the firm name of Mitchell & McClure, and respectfully show unto your Honors:

I.

That the Northern Pacific Railroad Company is a corporation created, organized and existing under and by virtue of an Act of Congress approved July 2nd, 1864, entitled "An Act Granting Lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's Sound on the Pacific Coast, by the northern route," and those certain acts and joint resolutions of Congress supplemental thereto and amendatory thereof.

That by the terms and provisions of said Act of Congress, said company was authorized and empowered to lay out, locate and construct, furnish, maintain and enjoy, a continuous railroad and telegraph line, with the appurtenances beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin, thence westerly by the most eligible railroad route as should be determined by said company within the territory of the United States, on a line North of the 45th degree of latitude, to some point on Puget Sound, with a branch via the valley of the Columbia River to a point at or near Portland in the State of Washington.

II.

That by the third section of said Act of July 2nd, 1864, lands were granted to said railroad company as follows:

"That there be, and hereby is, granted to the Northern Pacific Railroad Company ...... every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof,
4 the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption or other claims or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections."

That by a joint resolution adopted by the Senate and House of Representatives of the United States, approved May 31st,

1870, and entitled; "A resolution authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road, and to secure the same by mortgage, and for other purposes," it was further provided with respect to the said Northern Pacific Railroad Company that "in the event of their being in any State or territory in which said main line or branch line may be located, at the time of the final location thereof, the amount of lands per mile granted by Congress to said Company, within the limits prescribed by its charter, then said company shall be entitled, under the directions of the Secretary of the Interior, to receive so many sections of land belonging to the United States, and designated by odd numbers, in such State or Territory, within ten miles on each side of said road beyond the limits prescribed in said charter, as will make up such deficiency, on said main line or branch, except mineral and other lands as excepted in the charter of said company of eighteen hundred and sixty-four, to the amount of the lands that have been granted, sold
reserved, occupied by homestead settlers, pre-empted,
5 or otherwise disposed of subsequent to the passage of
the Act of July two, eighteen hundred and sixty-four."

III.

And your orators further show that on the 21st day of November, 1871, said Northern Pacific Railroad Company duly filed in the office of the Commissioner of the General Land Office, a certain map or plat duly approved by the Secretary of the Interior, showing the line of definite location of that portion of its road extending from Thomson Junction, a point on the St. Paul & Duluth Railroad, westwardly over and across the State of Minnesota, to a point near Fargo in the Territory of Dakota.

IV.

And your orators further show that on the 6th day of July 1882, the said Northern Pacific Railroad Company duly filed in the office of the Commissioner of the General Land Office, a certain map or plat showing the definite location of that portion of its road extending from said Thomson Junction on the St. Paul & Duluth Railroad, in the State of Minnesota, eastwardly to a point near the City of Ashland in the State of Wisconsin, which said map was duly approved by the Secretary of the Interior.

V.

And your orators further show that thereafter the said Northern Pacific Railroad Company duly definitely located the whole of its line of railroad extending from a point on Lake Superior in the State of Wisconsin, westwardly to a point on Puget Sound, and thereafter duly constructed and completed its said railroad and telegraph line upon said line of definite location, in all respects as required by the provisions of said Act of Congress approved July 2nd, 1864.

VI.

5½ And your orators further show that among the lands situate in the State of Minnesota, opposite to and coterminus with and more than twenty but less than forty miles distant from said line of definite location of that portion of said Northern Pacific Railroad extending from Thomson Junction to Ashland, so filed as aforesaid on the 6th day of July, 1882, were and are all the lands described in the schedule which is hereto annexed and made a part hereof, and marked "Exhibit A."

That between the 16th day of October A. D. 1883, and the 10th day of November of said year, the said Northern Pacific Railroad Company, complying in all respects with the instructions of the Secretary of the Interior, and under the direction of the Secretary of the Interior, duly selected all of the lands described in the said Exhibit A to this bill of complaint annexed, by filing in the United States District Land Office at Duluth, in the State of Minnesota, within which district said lands so selected were situate, its certain selection lists under and in accordance with the provisions of said Act of Congress, approved July 2nd, 1864, and said joint resolution of May 31st, 1870, and thereby selected all of said lands as indemnity, in lieu of other lands excepted from its said grant.

That the said selection lists were four in number, and were numbered respectively 10, 15A, 15B, and 16, the first of the aforesaid lists relating to lands within the first indemnity limits, and bearing date October 17th, 1883, the others relating to lands within the second indemnity limits, and bearing date October 17th, 1883, or some other date or dates to your orators unknown.

That upon the filing of said several selection lists, said Northern Pacific Railroad Company duly paid to the Land Officers of said District Land Office all the fees required by law, and said officers duly certified under dates of October 17th, and November 9th, 1883, that said selection lists were accepted and approved, and that the lands described therein, including all the lands described in said Exhibit A hereto
6 attached, were public lands to which the United States

had full title, not reserved sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights.

And your orators aver that the fact is that all said lands in the said Exhibit A described, were on the several dates of the filing of said several selection lists, in which they were respectively described, public lands to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, and were free from pre-emption or other claims or rights, than the rights of the Northern Pacific Railroad Company.

VII.

And your orators further show that thereafter and on the 17th day of October and the ninth day of November A. D. 1883, and on the 10th day of October, 1887, complying with certain other and further instructions of the Secretary of the Interior, the said Northern Pacific Railroad Company filed in the said District Land Office at Duluth, Minnesota, certain lists wherein and whereby said railroad company specified an equal quantity of lands lost from the primary or place limits of said grant, under the provisions of said act of July 2nd, 1864, and said resolution of May 31st, 1870, equal in area to those lands described in the said several selection lists hereinbefore mentioned.

That thereafter, and on June 19th, A. D. 1891, and on April 11th, A. D. 1893, the said Northern Pacific Railroad Company, insisting and maintaining that its prior selections of the lands described in the said Exhibit A hereto annexed, were in all respects valid and sufficient, and for the purpose of complying with certain other and further directions and requirements of the Secretary of the Interior, issued subsequent to the original dates of selection hereinbefore mentioned, and complying in all respects with said subsequent instructions of the Secretary of the Interior, filed in said United States District Land
7 Office at Duluth, Minnesota, certain re-arranged lists, wherein and whereby said railroad company designated the particular losses of lands within the primary or place limits of said grant, in lieu of which it selected each tract of land described in the several indemnity selection lists hereinbefore mentioned, and particularly each tract of the lands in the aforesaid Exhibit A described.

Your orators further show that each of the tracts described in said several indemnity selection lists, and each of the tracts described in said Exhibit A was selected by said Railroad Company in lieu of a tract or tracts of corresponding size situate within the primary or place limits of the original grant to said railroad company, within the State of Minnesota, which had been lost to the said railroad company by reason of having been granted, sold, reserved, occupied, pre-empted or otherwise disposed of prior to the time when that part of the line of said road lying opposite the same had been finally fixed and located, each of which tracts so lost to said company was and is situate in the State of Minnesota, and coterminus with and within twenty miles of the line of said Northern Pacific Railroad, as definitely fixed in and through the State of Minnesota; and that at the date of the definite location of that portion of the line of said railroad company in the State of Minnesota opposite thereto, the said lands so designated as particular losses in lieu of which the aforesaid indemnity selections were so made, had been granted, sold, reserved, occupied, pre-empted or otherwise disposed of by the United States, whereby the said Northern Pacific Railroad Company had become entitled to receive indemnity therefor. That as to the lands so lost, & in lieu of which selections were made within the second indemnity limits aforesaid the same had been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of by the United States, subsequently to the passage of the aforesaid act of July 2nd, 1864.

8 Your orators further show that neither at the time of the final location of that part of said line of railroad extending from Thomson Junction westward across the State of Minnesota, nor at the final location of that part of the line of said road extending eastward from said Thomson Junction to Ashland, was there in the State of Minnesota, the amount of lands per mile (Either of the said road lying in Minnesota to the eastward of said Thomson Junction, or of the said line as afterwards extended as aforesaid to the easterly boundary line of said State) granted by Congress to said Company within the limits prescribed by its charter; and that it was to make good the deficiency so existing on account of said line of railway in the State of Minnesota, and conformably in all respects to the conditions and requirements of the joint resolution of Congress hereinbefore mentioned, that all the lands in Exhibit A. described, lying more than thirty miles distant from the line of said road as finally located, were selected by said railroad company, each of said tracts so selected representing a tract or tracts of like size lost as hereinbefore described, and which by reason of the deficiency aforesaid, could not be made good within the indemnity limits originally fixed by said Act of 1864. That all of the lands in Exhibit A. described are non-mineral lands.

VIII.

And your orators further show, that in accordance with the practice of the Land Department of the United States, said selection lists filed as hereinbefore alleged, and said lists of losses hereinbefore mentioned, were duly transmitted to the Commissioners of the General Land Office, and that the same are now parts of the files in said office, but that no action has ever been taken upon said lists or upon the selection of said lands mentioned in Exhibit A. aforesaid, except as hereinbefore and hereinafter set forth.

9

IX.

And your orators further show that by virtue of the matters hereinbefore set forth, the said Northern Pacific Railroad Company became the owner and entitled to the possession of all the lands in the said Exhibit A. hereto annexed described; and that thereafter and during the year 1898 all the rights, interests and ownership in the lands described in said Exhibit A, which had been theretofore owned or enjoyed by the said Northern Pacific Railroad Company, were duly sold, conveyed and transferred to the Northern Pacific Railway Company, a corporation duly organized and doing business under the laws of the State of Wisconsin.

That thereafter, and on or about the 19th day of January A. D. 1900, the said Northern Pacific Railway Company, for value received, duly sold and conveyed by warranty deed in due form to your orators all of the lands described in the said Exhibit A. hereto attached.

That down to the time of the execution and delivery of the said deed from the Northern Pacific Railway Company to your orators, the Honorable Secretary of the Interior of the United States had not, nor has he at any time heretofore, caused to be prepared or delivered to either of the said railroad companies, or to anyone, a list or lists of any of the tracts which had been purchased or settled upon, or occupied, opposite to or along any portion of the line of road of said Northern Pacific Railroad Company East of Thomson Junction aforesaid, as provided by the Act of Congress entitled; "An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30th, 1899, and for other purposes", approved July 1st, 1898.

X.

Your orators further show that at the respective dates of the definite location of the various portions of the whole of the said main and branch lines of said railroad, and within

10 the primary limits of the grant to said railroad company, there were ten million, six hundred and twenty-four thousand, seven hundred and forty-isx and twenty-seven one hundredths (10,624,746.27) acres of land which were lost from said grant by reason of the exceptions contained in said Act of Congress of July 2nd, 1864; that at said respective dates of definite location, there were within the indemnity limits prescribed in said act of congress approved July 2, 1864, not more than seven million, one hundred and seventy-seven thousand, seven hundred and sixty-nine and seventy-one one hundredths (7,177,768.71) acres of land subject to selection under the terms of said Act of Congress of July 2, 1864, as indemnity for lands excepted from said grant.

That of said ten milllion, six hundred and twenty-four thousand, seven hundred and forty-six and twenty-seven one hundredths (10,624,746.27) acres of land so excepted from said grant and for which said railroad company was entitled to receive lands in lieu thereof, not more than two million, eight hundred and eighty-seven thousand and seventy-six and fifty seven one hundredths (2,887,076.57) acres were lost to and excepted from said grant subsequent to the passage and approval of said Act of July 2, 1864, and said last mentioned two million, eight hundred and eighty-seven thousand, and seventy-six and fifty-seven one hundredths (2,887,076.57) acres of said total ten million, six hundred and twenty-four thousand, seven hundred and forty-six and twenty-seven one hundredths (10,624,746.27) acres, so lost as aforesaid was the only portion thereof which could or can be satisfied under the provisions of the said joint resolution of Congress approved, May 31st, 1870, and that the total area of lands in the indemnity limits of said grant to said company, subject to selection as indemnity at the respective dates of the definite location of the various portions of the line of said railroad, lacked more than five hundred and fifty thousand acres of being sufficient to satisfy the losses of said grant.

11 That by virtue of the premises and upon the definite location of the line of said railroad, the said Northern Pacific Railroad Company, became the owner in fee of all of the lands described in said Exhibit A. hereto annexed.

XI.

Your orators further show that long after the definite location of the said railroad, and long after the construction thereof, and particularly all the parts thereof hereinbefore particularly mentioned, and at divers times subsequently to August first, A. D. 1893, all of the lands described in said Exhibit A. hereto annexed, were wrongfully and unlawfully

permitted by the proper officers of the Land Department of the United States, to be entered under various land laws of the United States, and final certificates of such entries were issued to the several persons entering the same. That the dates and character of said several entries are as specified in the said Exhibit A. That in the description of lands in the said Exhibit A., for convenience sake and to facilitate a tabulation of the entries relating to said lands, the letter "N" is used as an abbreviation for the word "North," the letter "S" as an abbreviation for the word "south," the letter "E" as an abbreviation for the word "East," and the letter "W" as an abbreviation for the word "West." The words "Cash Entry" are used to describe a private entry and cash purchase of lands, such as is authorized by law with reference to lands which have been offered at public sale, and not subsequently reserved or withdrawn; the word "homestead" is used to designate an entry of lands made under Section 2289 of the Revised Statutes of the United States. The lands referred to in said Exhibit A. as having been located with Scrip 779B issued by the Surveyor General at New Orleans, or by Scrip 183 State of Louisiana, were entered by Scrip issued under the Act of Congress entitled "An Act to provide for the location of certain confirmed private land claims in the State of Missouri, and for other purposes, approved June 2, 1858.
12 That the lands referred to in said Exhibit A. as entered with Sioux Half Breed Scrip, were entered or located with Scrip issued under the provisions of the Act of Congress entitled, "An Act to authorize the President of the United States to cause to be surveyed the tract of land in the Territory of Minnesota, belonging to the Half Breeds or mixed blood of the Dacotah or Sioux Nation of Indians, and for other purposes, approved July 17th, 1854. That the several persons named in the said Exhibit A., as grantees, are persons to whom the lands, of which they are described as the grantees, have been conveyed by deed in due form, from the entryman of said lands, the said deeds being now of record in the office of the Register of Deeds of the County in which the same are situate. That in each instance where in the said Exhibit A. a person is described as a later grantee, he is a person to whom the entrymen of the land described has for some reason to your orators unknown undertaken to convey the land by deed of record in the office of the Register of Deeds of the proper County, after previously conveying the same to the person described in said Exhibit as grantee of said land. That in each instance in which in said Exhibit A. a person is described as grantee by contract, he is a person to whom the entryman, or his assign, has executed and delivered an executory contract for the conveyance of the land referred to, which con-

tract is of record in the office of the Register of Deeds of the proper County. That in each instance in which in said Exhibit A. a person is described as a grantee of timber, or of any particular kind or kinds of timber, he is a person to whom the entryman of the lands referred to, or his assign, by deed duly recorded in the office of the Register of Deeds for the proper County, has granted and conveyed either all the timber situate upon the land in question, or the particular kinds of timber so specified in the said Exhibit A. That in each instance, in which in the said Exhibit A., a person is referred to as a grantee of timber by contract, he is a person to whom
13 the entryman of the land referred to, or his assign, has executed and delivered an executory contract for the sale of the timber situate on such land, or of such kinds of timber situate thereon as are designated in the said Exhibit. That the persons designated in the said Exhibit A. as mortgagees, are persons to whom the entryman of the lands referred to, or his assign, has executed and delivered a mortgage in ordinary form to secure indebtedness upon the said land, which mortgages are of record in the office of the Register of Deeds of the County in which said land is situate. That as to any descriptions of land mentioned in said Exhibit A., with respect to which the date [of] character of the entry is not specified, the date and character of such entry or entries is to your orators unknown. That the only lands with respect to which, so far as your orators are advised, patents have been issued, upon the pretended entries referred to in Exhibit A., are those with respect to which the date of the patent is specified in the Fourth or last column of the said Exhibit, but your orators allege that there may be and probably are other tracts of said land upon which patents have issued, but which have not yet been recorded in the registry of deeds, and have not come to the knowledge of your orators.

XII.

Your orators further allege that but for the vested rights of the said Northern Pacific Railroad Company and its grantees in the several tracts of land described in Exhibit A., the said lands would at the several dates of the respective alleged entries thereof described in said Exhibit A. have been unappropriated public lands of the United States open to the several kinds of entries or location, made or pretended to be made with respect to them, severally, as shown in Exhibit A., and that the several applications and proceedings with respect to the said several entries, were [is] due form, and regularly conducted, as required by law, and in the absence of the vested rights

of the said Northern Pacific Railroad Company and its
14 grantees in the said premises, would have been operative and effectual to invest the several entryman of said lands with complete equitable title thereto, each of such entries and locations having been finally receipted for, allowed and approved by the proper land officers of the United States; the only act remaining for the United States or its officers to perform with respect to such entries, being the issuance of the patent in cases where the patent has not already issued. That in the case of each parcel of land in Exhibit A. described, the final land office receipt or certificate issued upon said pretended entries, and the patents in cases where issued, appear in the records of the Interior Department and of the local Land Office at Duluth, and that the said subsequent conveyances and transfers, by deed, contract, or mortgage, are of record in the office of the Register of Deeds in the County in which the particular parcel of land is situate, and that each of the said patents, final certificates, deeds, contracts, mortgages, and other instruments in writing, constitutes a cloud upon the title of your orators, depriving their title of marketable quality, inflicting upon them serious and irreparable loss and injury, and making it impossible for your orators as successors in interest of said Northern Pacific Railroad Company to perfect their titles as of right they should be able to do, by securing from the United States the patents for said lands which by the said charter of said Railroad Company it was contemplated should be issued therefor. Your orators further allege that all proceedings connected with all the entries and locations mentioned in Exhibit "A" were had without notice to or the knowledge of said Northern Pacific Railroad Company, or any one claiming under it, and without any opportunity for said company or its assigns to be heard in opposition thereto.

XIII.

Your orators further allege that each of the persons claiming any of said parcels of land or the timber thereon, described in Exhibit A whether as grantee, or under executory
15 contract, or by way of mortgage or otherwise, as shown in the said Exhibit A is claiming and asserting adversely to your orators all the rights of ownership or otherwise, legal or equitable, with which they purport to have been invested by the several instruments, conveyances, or contracts hereinbefore or in said Exhibit A mentioned.

Your orators further allege that each of the said persons, whether claiming as grantees under deed, or executory contract, or as mortgagees, have taken and paid for their respective alleged interests with full knowledge and actual notice of the claim of the said Northern Pacific Railroad Company, and its assigns, to the said several parcels of land with full knowledge and actual notice of all the facts hereinbefore alleged, with reference to the grant of lands to the said Northern Pacific Railroad Company, and the location and construction of its line or lines of railroad hereinbefore mentioned, and its selections of lands as hereinbefore stated, and of all the facts hereinbefore alleged respecting the said Northern Pacific Railroad Company, and its relations to said lands.

XIV.

Your orators further show that all of the said entries and locations of lands referred to in Exhibit A, were allowed, and the final certificates (and so far as issued the patents) issued therefor under a mistake of law founded upon a certain erroneous ruling by the Secretary of the Interior, to the effect that the said Northern Pacific Railroad Company, and their successors in interest, were not entitled to any lands by virtue of said Act of Congress, approved July 2nd, 1864, and said joint resolution approved May 31st, 1870, granting lands to said Northern Pacific Railroad Company, east of that point on the line of said Northern Pacific Railroad where the same crosses the line of the St. Paul & Duluth Railroad known as Thomson
16 Junction. That the accuracy of this ruling, that is to say, the question at what point is the eastern terminus of the land grant of the said railroad company under the Act of Congress and joint resolution aforesaid, is the only question of law or fact at issue between your orators and the several persons claiming the said several parcels of land adversely under the entries and locations referred to in Exhibit A, and that the validity of each and all of the said entries and locations, and the validity of the claim of your orators to the said lands depend upon one and the same questions, to wit, the question above stated.

That if your orators should proceed severally against the several adverse claimants to the several parcels of land mentioned in said Exhibit A, whether at law or in equity, a great and unnecessary multiplicity of actions would result, wherein would be tried many times over the same and single matter of controversy above described, to the serious detriment as well of your orators and of the defendants, as of the court.

XV.

Your orators further show that certain of the entrymen mentioned in Exhibit A., and certain of their assigns, subsequently to the dates of their said respective entries, have entered upon their respective parcels of land as described in said Exhibit A., and cut and removed therefrom large quantities of pine saw logs, railroad ties, cedar telegraph poles, fence posts, and other timber, but the particular parcels from which such timber has been cut, and the particular character and extent of such cutting, are at the present time to your orators unknown.

That all of the lands described in said Exhibit A. are valuable almost wholly on account of the timber growing thereon, the timber constituting in all cases not less than four-fifths of the value, and in many cases a still larger percentage.

That all of the said lands were entered, located and purchased by the several persons named in Exhibit A., with
17 almost exclusive reference to the value of the timber
thereon, and that all of the said parties are threatening, proposing, and intending to cut and remove, or to cause to be cut and removed, the more valuable portions of the timber growing upon the several tracts or parcels claimed by them respectively, and unless restrained by order of this court, will cause such timber to be so cut and removed.

That some of said parties defendant are now actually engaged in cutting and removing timber from their respective parcels, but from which particular parcels your orators are not informed and are unable to state.

That all timber and all claims for the value of timber cut by any of the defendants from any of said lands prior to the above named date of your orators' purchase thereof have been duly assigned to your orators by the corporation holding said Northern Pacific Railroad title at the time of such cutting and removal.

That the matter in dispute between your orators and each of the defendants severally exceeds Two Thousand Dollars exclusive of costs, and that the value of the interests in said lands claimed by each of the defendants exceeds the said sum.

Forasmuch as your orators can have no adequate relief except in this court, and to the end therefore that the said defendants and each of them, without oath (their answer under oath being hereby waived) may full, true, direct and perfect answer make to all and singular the matters aforesaid, and that the several parcels of land described in said Exhibit A. hereto attached, and made a part hereof and all the timber standing or lying thereon may be determined, adjudged and decreed to be the land and timber of and belonging to your orators, and that your orators have the equitable title thereto;

and that the several alleged or pretended entries and locations of said lands referred to in said Exhibit A., under and by virtue of which the several defendants claim their said alleged respective parcels, may together with the final certificates, land office receipts, and patents, issued thereon,
18 or in pursuance thereof, be adjudged and declared to
be unlawful and wholly void and without effect, and that the same may be removed as clouds from the titles of your orators, and the defendants severally enjoined from making or asserting any claim of title by virtue thereof to any of said lands or timber; or if the said patents or any of them which may appear to have issued upon any of the said entries or locations described in said Exhibit A, shall appear or be held to have passed to the defendants or their grantors the legal titles to any of said lands, that the several defendants appearing to be now invested with such legal titles to such land or any timber cut therefrom, may be adjudged and decreed to hold the same as trustees for your orators, and for the benefit of your orators, and may be adjudged and decreed to convey such of said legal titles as may appear to be held by them respectively to your orators, and that in default of such conveyances the decree of the court may be adjudged to stand and operate as such conveyance, or conveyances, and that the defendants and each of them may be perpetually restrained from cutting or removing from any of the premises described in said Exhibit A any timber standing or lying thereon, and that the defendants may be similarly restrained during the pendency of this cause, and that the defendants may be made to account for and pay over to your orators, the full value of any timber which may appear to have been heretofore or hereafter cut and removed by or for them respectively from any of said lands; and that your orators may be awarded the possession of any of said lands or timber standing or lying thereon which upon the hearing of this cause may appear to be possessed by any of the defendants.

May it please your honors to grant unto your orators a writ of subpoena to be issued out of and under the seal of this court to be directed to each of the defendants Waldo A. Avery, George B. Morley, Olean Land Company, Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure,
Ezra Richardson, Charles McIlhargey, LeRoy Brooks,
19 John B. Kehl, C. M. Hill Lumber Company, June B.
Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton,, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee, Margaret Lynch, Michael Kelley,

Otton Carlson, Alger, Smith & Company, Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, S. J. Cusson, Johnson-Wentworth Company, Cloquet Lumber Company, Jethro G. Mitchell, LeRoy Brooks and W. C. McClure, as co-partners doing business under the firm name of Mitchell & McClure, commanding them at a certain date and under a certain penalty to be named therein, to be and appear before this honorable court, and then and there to answer the premises; and further to consent to perform and abide such further order, direction and decree as to this court shall seem meet and shall be consistent with equity.

May it please your honors to grant unto your orators writs of injunction enjoining and restraining the defendants and each of them during the pendency of this cause, and forever, from selling or disposing of, or removing any timber cut or caused to be cut, by them respectively, or by any of the defendants from any of the aforesaid premises, and from cutting or removing or selling or disposing of any of the timber now standing or lying upon the said premises, or from creating or attempting to create any charge upon said premises, or any of the said timber standing or lying thereon, or cut therefrom.

BILLSON, CONGDON &
DICKINSON & OLDENBERG,
Solicitors and of Counsel for Complainants, 511 Lonsdale Building, Duluth, Minn.

EXHIBIT A.

Subdivision and number of Section.	Date and Character of Entry.	Names of Entrymen and Grantees if any.	Date of Patent if any.
The following lands in Township 54 Range 10:			
Sw ¼ of ne ¼ of sec. 3.	Dec. 22, 1897. Cash Entry.	Edward Lynch, Entryman, Olean Land Co., Grantee.	
The following lands in Township 55 Range 10:			
Se ¼ of nw ¼ of sec 33.	Feb. 7, 1898. Cash Entry.	Eva Spittler, Entryman, Olean Land Co., Grantee.	
The following lands in Township 53 Range 11:			
Sw ¼ of sw ¼ sec. 7.	Jan. 24, 1898. Cash Entry.	William H. Boyl, Entryman, Waldo A. Avery and George B. Morley, Grantees.	
Se ¼ of nw ¼ of sec. 17.	Jan. 24, 1898. Cash Entry.	Joseph L. Picotte, Entryman, John J. Rupp, Fred P. Brewer and W. C. McClure, Grantees of Pine, Spruce and Tamarack Timber.	
Ne ¼ of nw ¼ and nw¼ of ne ¼ of sec. 29.	Sept. 12, 1898. Cash Entry.	Joseph G. Miller, Entryman, Ezra Richardson and Waldo A. Avery, Grantees.	
The following lands in Township 55 Range 11:			
S ½ of sw ¼ including lot 4 of sec. 7.	July 9, 97. Cash Entry.	Sylvester Duquaine, Entryman, Ezra Richardson and Waldo A. Avery Grantees.	
Se ¼ of nw ¼ of sec. 23.	June 21, 1898. Cash Entry.	Vera Fuller, Entryman, Waldo A. Avery and George B. Morley, Grantees by contract.	
Ne ¼ of sw ¼ and s ½ of sw ¼ of sec. 27.	May 7, 1898. Cash Entry.	John O'Connell, Entryman, Waldo A. Avery and George B. Morley, Grantees; Charles McIlhargey, Later Grantee.	
W ½ of sw ¼ and se ¼ of sw ¼ of sec. 29.	Feb. 21, 1897. Cash Entry.	Bernard F. Forristal, Entryman, Le Roy Brooks, Grantee.	Nov. 5, 1897.
Sw ¼ of ne ¼, se ¼ of nw ¼ and Ne ¼ of sw ¼ of sec. 29.	Oct. 19, 1897. Cash Entry.	Terrance Gilloughley, Waldo A. Avery and George B. Morley, Grantees.	

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Subdivision and number of Section.	Date and Character of Entry.	Names of Entrymen and Grantees if any.	Date of Patent if any
Township 55 Range 11 Continued:			
Ne ¼ of nw ¼ and nw ¼ of ne ¼ of sec. 29.	Nov. 18, 1897. Cash Entry.	Patrick J. Murray, Entryman, Waldo A. Avery and George B. Morley, Grantees.	Jan. 26, 1898
Lots 1 and 2 and e ½ of nw ¼ of sec. 31.	Oct. 14, 1897. Cash Entry.	Richard Long, Entryman, Waldo A. Avery and George B. Morley, Grantees.	
S ½ of se ¼ of sec. 31.	Aug. 16, 1897. Cash Entry.	William J. Lanigan, Entryman, Leroy Brooks, Grantee.	Nov. 5, 1897
N ½ of se ¼ of sec. 31.	Oct. 2, 1897. Cash Entry.	Annie Cargill, Entryman, Leroy Brooks, Grantee.	Jan. 26, 98.
W ½ of nw ¼ of sec. 33.	June 1, 1898. Cash Entry.	Martha E. Nesbitt, Entryman, Waldo A. Avery and George B. Morley, Grantees.	
E ½ of sw ¼ of sec. 35.	Nov. 30, 1897. Cash Entry.	Jane Spitler, Entryman, Olean Land Co., Grantee.	Jan. 26, 98.
The following lands in Township 52 Range 12:			
S ½ of ne ¼ and n ½ of se ¼ of sec. 3.	Dec. 22, 1897. Location of Scrip 779 B, issued by Surveyor Gen. at New Orleans.	John S. Rollin, Entryman, John B. Kehl, Grantee.	
N ½ of ne ¼ of sec. 3.	Dec. 16, 1897. Cash Entry.	Hannah Maria Rollin, Entryman, John B. Kehl, Grantee.	
Sw ¼ of nw ¼ of sec. 5.		John A. Cobean, Entryman, Waldo A. Avery and George B. Morley, Grantees.	Nov. 5, 97.
E ½ of nw ¼ and sw ¼ of ne ¼ sec. 7.	Apr. 17, 1899. Cash Entry.	Jos. Nevins, Entryman, Waldo A. Avery and George B. Morley, Grantees, by contract.	
Nw ¼ of sec. 15.	Apr. 14, 1898. Location of Scrip No. 183. State of Louisiana.	Alexander Fraser, Entryman, June B. Noyes and C. M. Hill Lumber Co., Grantees. Mitchell & McClure, Mortgagees.	
Sw ¼ of sec. 15.	Oct. 7, 1897. Homestead.	Isaac Henry—contested by F. L. Ryan. C. M. Hill Lumber Co., Grantee of Timber.	
The following lands in Township 53 Range 12:			
Lots 1, 2 and 3, and se ¼ of ne ¼ of sec. 1.	Nov. 10, 1897. Cash Entry.	Walter Jackson, Entryman, Waldo A. Avery and George B. Morley, Grantees.	Jan. 26, 98.

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Township 53 Range 12 Continued.

Subdivision and number of Section.	Date and Character of Entry.	Names of Entrymen and Grantees if any.	Date of Patent if any.
W ½ of nw ¼ of sec. 1.	Sept. 8, 1897. Sioux Half-Breed Scrip 393 O.	Daniel Renville, Entryman, Waldo A. Avery and George B. Morley, Grantees.	
W ½ of se ¼ and ne ¼ of sw ¼ of sec. 1.	Nov. 15, 1898. Cash Entry.	Benjamin Grimm, Entryman, Waldo A. Avery and George B. Morley, Grantees by contract.	
Nw ¼ of ne ¼, n ½ of nw ¼ and se ¼ of nw ¼ of sec. 3.		Alfred H. Wigdahl, Entryman, Waldo A. Avery and George B. Morley, Grantees.	Jan. 26, 98.
E ½ of se ¼ of sec. 3.		John E. Wall, Alger-Smith & Co., Grantees.	Jan. 26, 98.
W ½ of se ¼ of sec. 3.	July 28, 1898. Cash Entry.	Gus J. Carpenter, Assignee of John W. Holt, Entryman, LeRoy Brooks, Grantee.	
S ½ of ne ¼ and nw ¼ of se ¼ of sec. 5.	Sept. 22, 1897. Cash Entry.	Gus J. Carpenter, Waldo A. Avery and George B. Morley, Grantees.	Jan. 26, 98.
N ½ of nw ¼ and sw ¼ of nw ¼ of sec. 5.	Feb. 16, 1898. Cash Entry.	Ellen F. Coffin, Entryman, Waldo A. Avery and George B. Morley, Grantees.	
Se ¼ of nw ¼ of sec. 5.	Jan. 24, 1898. Cash Entry.	William J. Pierce, Entryman, Waldo A. Avery and George B. Morley, Grantees.	
S ½ of se ¼ and ne ¼ of se ¼ of sec. 5.	Sept. 27, 1897. Cash Entry.	Anna D. Frink, Entryman, LeRoy Brooks, Grantee.	Jan. 26, 98.
S ½ of ne ¼, n ½ of se ¼ and sw ¼ of se ¼ of sec. 7.	Mar. 3, 1899. Cash Entry.	Albert O. Williams, Entryman, Waldo A. Avery and George B. Morley, Grantees.	
W ½ of nw ¼ and nw ¼ of sw ¼ of sec. 11.	May 18, 1898. Cash Entry.	Chris Johnson, Entryman, Waldo A. Avery and George B. Morley, Grantees of the timber.	
E ½ of ne ¼ sec. 11.	Nov. 17, 1897. Cash Entry.	Kate C. Hart, Entryman, LeRoy Brooks, Grantee.	Feb. 9, 98.
Nw ¼ of se ¼ of sec. 11.	Nov. 17, 1897. Cash Entry.	Kate C. Hart, Entryman, LeRoy Brooks, Grantee.	Feb. 9, 98.
Nw ¼ of se ¼ of sec. 11.	Sept. 28, 1897. Cash Entry.	Rufus P. Edson, Entryman, LeRoy Brooks, Grantee.	Jan. 26, 98.

Subdivision and number of Section.	Date and Character of Entry.	Names of Entrymen and Grantees if any.	Date of Patent if any.
	Township 53 Range 12 continued:		
E ½ of ne ¼ and sw ¼ of ne ¼ of sec. 13.	Oct. 19, 1897. Cash Entry.	Allen McDonnell, Entryman, LeRoy Brooks, Grantee.	Jan. 26, 98.
Se ¼ of sec. 13.	Cash Entry.	Emma P. McDermott, Entryman, Waldo A. Avery and George B. Morley, Grantees.	Feb. 9, 98.
N ½ of se ¼ and se ¼ of se ¼ of sec. 17.	Feb. 17, 1899. Cash Entry.	Regina Swanson, Entryman, Waldo A. Avery and George B. Morley, Grantees.	
Nw ¼ of ne ¼ of sec. 21.	Jan. 27, 1898. Cash Entry.	Anna Cashin, Entryman, Waldo A. Avery and George B. Morley, Grantees.	
Se ¼ of sw ¼ of sec. 23.	Feb. 14, 1898. Cash Entry.	Mary Eberling, Entryman, Waldo A. Avery and George B. Morley, Grantees.	
Ne ¼ of sw ¼ of sec. 29.	May 21, 1898. Cash Entry.	Ella Trempe, Entryman, Waldo A. Avery and George B. Morley, Grantees.	
S. ½ of se ¼, nw ¼ of se ¼ and sw ¼ of ne ¼ of sec. 31.	May 3, 1899. Cash Entry.	Edgar W. Mosher, Entryman, Waldo A. Avery and George B. Morley, Grantees.	
Se ¼ of sw ¼ of sec. 31.	May 21, 1898. Cash Entry.	Jos. L. Trempe, Entryman, Waldo A. Avery and George B. Morley, Grantees.	
Se ¼ of sec. 33.	Aug. 22, 1898. Cash Entry.	Charles Jacobson, Entryman, LeRoy Brooks, Grantee.	
	The following lands in Township 54 Range 12:		
N ½ of ne ¼ and n ½ of nw ¼ of sec. 1.	June 27, 1898. Cash Entry.	Peter Bohan, Entryman, Waldo A. Avery and George B. Morley, Grantees by Contract.	
S ½ of nw ¼ and s ½ of ne ¼ of sec. 1.	Dec. 28, 1898. Cash Entry.	Jay W. Anderson, Entryman, Waldo A. Avery and George B. Morley, Grantees.	
Sw ¼ of sec. 1.	Oct. 22, 1898. Cash Entry.	Elizabeth Peterson, Entryman, Waldo A. Avery and George B. Morley, Grantees. By Contract.	
Se ¼ of sec. 1.	May 18, 1898. Cash Entry.	Angie C. Thompson, Entryman, Waldo A. Avery and George B. Morley, Grantees. By Contract.	
Lots 3, 4, and 5 and sw¼ of nw ¼ of sec. 3.	Nov. 15, 1896. Cash Entry.	Edward J. Heath, Entryman, Didrik Johnson, Entryman, Waldo A. Avery, Trustee. Grantee by Contract.	
Lots 7 and 8 ne ¼ of sw ¼ of sec. 5.		May L. Hansen, Entryman. Waldo A. Avery and George B. Morley, Grantees.	Feb. 9. 98.

Township 54 Range 12 continued:

Subdivision and number of Section.	Date and Character of Entry.	Names of Entrymen and Grantees if any.	Date of Patent if any.
Sw ¼ of nw ¼ of sec. 5.	July 1, 1897. Cash Entry.	Charles Rosen, Entryman, LeRoy Brooks, Grantee.	Nov. 5, 97.
N ½ of nw ¼ and sw ¼ of nw ¼ of sec. 9.	May 19, 1898. Cash Entry.	Frank W. Eaton, Entryman, Waldo A. Avery and George B. Morley.	
N ½ of ne ¼ of sec. 11.	Apr. 25, 1898. Cash Entry.	Stephen Thomas, Entryman. Waldo A. Avery, Trustee. Grantee by Contract.	
Nw ¼ of sec. 13.	Jan. 13, 1899.	Walter G. Grimmer, Entryman, Waldo A. Avery, Grantee, by Contract.	
Nw ¼ of sec. 15.	June 8, 1899. Cash Entry.	George J. Mallory, Entryman, Waldo A. Avery, Trustee, Grantee.	
S ½ of sw ¼ and ne ¼ of sw ¼ of sec. 15.	Aug. 8, 1893. Cash Entry.	Harriet E. Rockwell, Assignee of Hiram P. Swain, Entryman, LeRoy Brooks, Grantee.	
E ½ of sw ¼ of sec. 17.	Oct. 6, 1897. Cash Entry.	Graham Pulber, Entryman, LeRoy Brooks, Grantee.	Jan. 26, 98.
W ½ of se ¼ of sec. 17.	Oct. 6, 1897. Cash Entry.	Edward P. Gammon, Entryman, LeRoy Brooks, Grantee.	Jan. 26, 98.
Lot 2 and e ½ of se ¼ of [—]	Feb. 14, 1898. Cash Entry.	Emma E. Rockwell, Entryman, LeRoy Brooks, Grantee.	
Se ¼ of ne ¼ and ne ¼ of se ¼ of sec. 19.	Apr. 20, 1898. Cash Entry.	Malcolm A. McDonald, Entryman, Michael Kelley, Grantee.	
Lot 5 and se ¼ of sw ¼ of sec. 19.		Anna D. Smith, Patentee, Cloquet Lumber Co., Grantee.	Nov. 5, 97.
Ne ¼ of ne ¼ of sec. 23.	June 22, 1897. Cash Entry.	William A. Henley, Entryman, Waldo A. Avery and George B. Morley, Grantees.	Nov. 5, 97.
Nw ¼ of se ¼ of sec. 23.	June 22, 1897. Cash Entry.	Flora Louden, Entryman, LeRoy Brooks, Grantee.	Nov. 5, 97.
Nw ¼ of ne ¼ and n ½ of nw ¼ of sec. 25.	Aug. 21, 1897. Cash Entry.	Amelia Smith, Entryman, LeRoy Brooks, Grantee.	
W ½ of se ¼ sw ¼ of ne ¼ and se ¼ of sw ¼ of sec. 25.	June 29, 1897. Cash Entry.	James E. Brown, Entryman, Waldo A. Avery and George B. Morley, Grantees.	Nov. 5, 97.

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Subdivision and number of Section.	Date and Character of Entry.	Names of Entrymen and Grantees if any.	Date of Patent if any.
	Township 54 Range 12 continued:		
Sw ¼ of nw ¼, n ½ of sw ¼ and sw ¼ of sw ¼ of sec. 25.	Dec. 9, 1897. Cash Entry.	Emma K. Clay, Entryman, Olean Land Company, Grantee.	
S ½ of sw ¼ of sec. 27.	Nov. 23, 1897. Cash Entry.	Mary J. Schultz, Entryman, LeRoy Brooks, Grantee.	Feb. 9, 198.
Se ¼ of nw ¼ sec. 29.	Oct. 22, 1897. Cash Entry.	Susan A. Grady, Entryman, LeRoy Brooks, Grantee.	Jan. 26, 98.
Lot 1 or nw ¼ of nw ¼ and ne ¼ of nw ¼ of sec. 31.	Dec. 17, 1897. Cash Entry.	Mary Florence White, Entryman, Justin Wentworth and George K. Wentworth, Grantees.	
Sw ¼ of ne ¼, nw ¼ of se ¼, e ½ of se ¼ of sec. 33.	Sept. 7, 1897. Cash Entry.	William N. Edson, Entryman, LeRoy Brooks, Grantee.	Jan. 26, 98.
Se ¼ of nw ¼, e ½ of sw ¼ and sw ¼ of se ¼ of sec. 33.	Sept. 7, 1897. Cash Entry.	Edgar L. Anderson, LeRoy Brooks, Grantee.	Jan. 26, 98.
Se ¼ of nw ¼ n ½ of sw ¼ and nw ¼ of se ¼ of sec. 35.	June 23, 1897. Cash Entry.	Henry Smith, Entryman, LeRoy Brooks, Grantee.	Nov. 5, 97.
	The following lands in Township 55 Range 12:		
N ½ of ne ¼ and e ½ of nw ¼ of sec. 7.	Mar. 27, 1897. Homestead.	Thomas J. McDermott, Entryman, Herbert H. Hoyt, Grantee. Subject to land contract to Waldo A. Avery and Ezra Richardson.	
Nw ¼ of ne ¼ of sec. 13.	Aug. 26, 1897. Cash Entry.	Jeremiah Donohue, Olean Land Co., Grantee.	Nov. 5, 97.
Ne ¼ of sw ¼ of sec. 13.	Aug. 26, 1897. Cash Entry.	John Foster, Entryman, Olean Land Company, Grantee.	Nov. 5, 97.
Nw ¼ of nw ¼ of sec. 13.	Feb. 15, 1898. Cash Entry.	Rachel C. Hunter, Entryman, Waldo A. Avery and George B. Morley, Grantees.	
S ½ of se ¼ and s ½ of sw ¼ of sec. 13.	Sept. 6, 1898. Cash Entry.	John R. Randall, Entryman, Waldo A. Avery and George B. Morley, Grantees by Contract.	
Lots 1 and 8, of sec. 27.	Mar. 21, 1899. Cash Entry.	Konrad Eriksen, Entryman, Waldo A. Avery and Ezra Richardson, Grantees by Contract.	
Lot 2, and n ½ of nw ¼ of sec. 27.	Aug. 23, '98, Cash Entry.	Otto Carlson, Entryman, Waldo A. Avery and Ezra Richardson, Grantees by Contract.	

Subdivision and number of Section.	Date and Character of Entry.	Names of Entrymen and Grantees if any.	Date of Patent if any.
Township 55 Range 12 continued:			
Ne ¼ of sec. 29.	Sept. 14/97. Cash Entry.	Julia L. Hughes, Entryman, Waldo A. Avery & George B. Morley, Grantees.	
E ½ of nw ¼ and sw ¼ of nw ¼ of sec. 29.	Dec. 22/98. Cash Entry.	Jospeh Dimarco, Entryman, Waldo A. Avery & George B. Morley, Grantees.	
Lots 3 and 4 and w ½ of se ¼ of sec. 33.	Feb. 7, 1899. Cash Entry.	Bertha M. Randall, Entryman, Waldo A. Avery, Trustee, Grantee by Contract.	
Se ¼ of sec. 35.	Apr. 25, 1899. Cash Entry.	Martin L. Fraser, Entryman, Waldo A. Avery and Ezra Richardson, Grantees by Contract.	
Lots 1 and 2 and nw ¼ of se ¼ of sec. 29.	Aug. 30/98.	Daniel Maher, Entryman, Waldo A. Avery and George Morley, Grantees by Contract.	
The following lands in Township 52 Range 13:			
W ½ of sw ¼ of sec. 3.		Noble A. Beatty, Entryman, Norris Realty Co., Grantee, Mitchell & McClure, Grantees of Pine Timber.	Jan. 26, 98.
S. ½ of ne ¼ and ne ¼ of ne ¼ of sec. 9.	Oct. 14, 1897. Cash Entry.	Lucina A. Sylvester, Mitchell & McClure, Grantees of Pine Timber.	Jan. 26, 98.
Ne ¼ of sec. 15.	Aug. 24, 1897.	Elizabeth F. Farrell, Entryman, Lesure Lumber Co., Grantee.	
S. ½ of nw ¼ of sec. 13.	July 18, 1898. Cash Entry.	Alice Littell, Entryman, Justus H. McLaughlin, Grantee, Lesure Lumber Co., Grantee of Pine Timber.	
The following lands in Township 53 Range 13.			
N ½ of ne ¼ and se ¼ of ne ¼ of sec. 1.	Dec. 7, 1897. Cash Entry.	Edward B. Manwaring, Entryman, B. C. Cooke, Grantee of Undivided one-half interest.	
Nw ¼ of nw ¼ and s ½ of nw ¼ of sec. 1.	Dec. 7, 1897. Cash Entry.	Constance Soderlund, Entryman, Edward B. Manwaring, and B. C. Cooke, Grantees.	
The following lands in Township 54 Range 13:			
Se ¼ of nw ¼ and ne ¼ of sw ¼ of sec. 1.	Sept. 7, 1897. Cash Entry.	Robert Angst Entryman, William O'Brien, Grantee of Pine Timber. Franklin Lumber Co., Grantee of Land.	Jan. 26, 98.
S. ½ of sw ¼ of sec. 3.	Mar. 24, 1899. Cash Entry.	Michael Cashin, Entryman, S. J. Cusson, Grantee.	

Subdivision and number of Section.	Date and Character of Entry.	Names of Entrymen and Grantees if any.	Date of Patent if any.
Township 54 Range 13 continued.			
Nw ¼ of ne ¼ of sec. 15.	Dec. 17, 1897. Cash Entry.	Victor A. Dash, Entryman, Johnson-Wentworth Co., Grantee.	
Ne ¼ of ne ¼ (or Lot 1) of sec. 1.	Sept. 7, 1897. Cash Entry.	Hortense G. Gruber, Entryman, Johnson-Wentworth Co., Grantee.	Jan. 26, 98.
Nw ¼ of se ¼ of sec. 5.	Dec. 17, 1897. Cash Entry.	Thomas H. Little, Entryman, Cloquet Lumber Co., Grantee.	
Se ¼ of ne ¼ of sec. 5.	Sept. 15, 1897. Cash Entry.	Marion E. Morrison, Entryman. Johnson-Wentworth Co., Grantee.	Jan. 26, 98.
Sw ¼ of ne ¼ of sec. 7.	Sept. 7, 1897. Cash Entry.	Clara C. Gruber, Entryman, Johnson-Wentworth Co., Grantee.	Jan. 26, 98.
The following lands in Township 53 range 15:			
N ½ of ne ¼ and ne ¼ of nw ¼ of sec. 1.	Feb. 15, 1898. Cash Entry.	Joseph Gauvreau, Entryman, Johnson-Wentworth Co., Grantee.	
Ne ¼ of sw ¼ of sec. 1.	Jan. 19, 1898. Sioux Half-breed Scrip Entry. No. 633 B.	Augusta Brown Robertson, Entryman, Johnson-Wentworth Co., Grantee.	
S ½ of ne ¼ and n ½ of se ¼ of sec. 3.	Feb. 16, 1898. Cash Entry.	S. Alida Boyed, Entryman, Johnson-Wentworth Co., Grantee.	
Se ¼ of ne ¼ and n ½ of se ¼ of sec. 11.	Feb. 15, 1898. Cash Entry.	George Dixon, Entryman, Johnson-Wentworth Co., Grantee.	
The following lands in Township 54 Range 15:			
N ½ of sw ¼ of sec. 19.		J. Henry Gruber, Entryman, Cloquet Lumber Co., Grantee.	Nov. 5, 97.
Sw ¼ of ne ¼ of sec. 21.	Cash Entry.	Emma S. Smith, Entryman, Johnson-Wentworth Co., Grantee.	Jan. 26, '98.
The following lands in Township 55 Range 15:			
E ½ of sw ¼ of sec. 25.	Aug. 26, 1897. Cash Entry.	Christ Zabel, Entryman, Johnson-Wentworth Co., Grantee.	
The following lands in Township 55, Range 16:			
Ne ¼ of se ¼ of sec. 35.	July 30, 1897. Cash Entry.	Minnie Stewart, Entryman, George K. Wentworth and Justin Wentworth, Grantees. Johnson-Wentworth Co., Grantees of timber by Contract.	

The foregoing is Exhibit "A" referred to in and made a part of the Bill.

BILLSON, CONGDON & DICKINSON,
& H. OLDENBERG,
Solicitors for Complainants.

28 Indorsed: Filed April 17th, 1900. Henry D. Lang, Clerk. By Margaret McKay, Deputy.

That on the same day, to wit, on the 17th day of April, A. D. 1900, there was filed with said Clerk a Praecipe for a Chancery Subpoena; which said Praecipe is, in words and figures, as follows, to wit:

Circuit Court of the United States, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhauser,
vs.
Waldo A. Avery et al.

Praecipe for Chancery Subpoena.

To the Clerk of the above named Court:

Please issue Chancery Subpoena in the above entitled matter together with copies for service on the defendants and deliver same to the Marshal for service.

BILLSON, CONGDON & DICKINSON,

Indorsed: Filed April 17th, 1900. Henry D. Lang, Clerk. By Margaret McKay, Deputy.

That further on the same day, to wit, on the 17th day of April, A. D. 1900, there was issued by said Clerk, a Chancery Subpoena in said cause and that subsequently thereto, to wit, on the 23d day of May, A. D. 1900, said Chancery Subpoena was returned into Court by the Marshal of said District with his return of service attached thereto; which said Chancery Subpoena and Marshal's Return are in words and figures, as follows, to wit:

United States of America, District of Minnesota, Fifth Division.

29 The President of the United States of America, to Waldo A. Avery, George B. Moreley, Olean Land Company, a corporation organized and doing business under the laws of the State of Minnesota; Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, LeRoy Brooks, John B. Kehl, C. M. Hill Lumber Company, a corporation organized and doing business under the laws of the State of West Virginia, June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter

G. Grimmer, Waldo A. Avery, Trustee, Michael Kelley, Otto Carlson, Alger, Smith & Company, a corporation organized and doing business under the laws of the State of Michigan, Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a corporation organized and doing business under the laws of the State of Minnesota, Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, S. J. Cusson, Johnson-Wentworth Company, a corporation organized and doing business under the laws of the State of Minnesota, Cloquet Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, Jethro G. Mitchell, LeRoy Brooks and W. C. McClure, as co-partners doing business under the firm name of Mitchell & McClure—Greeting:

You are hereby commanded to and appear at Rules, to be held at the office of the clerk of the Circuit Court of the United States, for the District of Minnesota, on the first Monday of July next, at the City of Duluth, then and there to answer the Bill of Complaint of John A. Humbird and Frederick Weyerhauser, filed against you on the 17th day of April, A. D. 1900: hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 18th day of April, 1900. Issued at my office in the City of Duluth, under the seal of said Circuit Court, the day and year last aforesaid.

[Seal of the Court] HENRY D. LANG, Clerk.
By Thos. H. Pressnell, Deputy.

Memorandum: The above named defendants to enter their appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken pro confesso.

HENRY D. LANG, Clerk,
By Thos. H. Pressnell, Deputy.

BILLSON, CONGDON & DICKINSON,
Complainants' Solicitors.

30 United State of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Ezra Richardson by handing to and leaving a true and correct copy thereof with Ezra Richardson personally at Duluth in said District on the 26th day of April, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ...	$2.06
	$2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Subpoena on the therein-named Chas. McIlhargey by handing to and leaving a true and correct copy thereof with Chas. McIlhargey, personally at Duluth in said District on the 2d day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named W. C. McClure by handing to and leaving a true and correct copy thereof with W. C. McClure, personally at Duluth in said District on the 1st day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Service ..	$2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named C. M. Hill Lumber Co. by handing to and leaving a true and correct copy thereof with C. M. Hill, President, C. M. Hill Lumber Company personally at Duluth in said District on the 7th day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	$2.00
Travel ..	.06
	$2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Subpoena on the therein-named Isaac Henry by handing to and leaving a true and correct copy thereof with Isaac Henry personally at Duluth in said District on the 2d day of May,
31 A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Benjamin Grimm by handing to and leaving a true and correct copy thereof with Benjamin Grimm personally at Duluth in said District on the 5th day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Peter Bohn by handing to and leaving a true and correct copy thereof with Peter Bohn personally at Duluth in said District on the 2d day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Frank W. Eaton by handing to and leaving a true and correct copy thereof with Frank W. Eaton personally at Duluth in said District on the 2d day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 2.00
Travel .. .06

2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Michael Kelly by handing to and leaving a true and correct copy thereof with Michael Kelly personally at Duluth in said District on the 7th day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 2.00
Travel .. .06

2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Alger-Smith & Co. by handing to and leaving a true and correct copy thereof with John Millen, General Manager for Alger, Smith & Co. personally at Duluth in said District on the 1st day of May, A. D. 1900.

32 WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 2.00
Travel .. .06

2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Herbert H. Hoyt by handing to and leaving a true and correct copy thereof with Herbert H. Hoyt personally at Duluth in said District on the 2d day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Martin L. Fraser by handing to and leaving a true and correct copy thereof with Martin L. Frazer personally at Duluth in said District on the 1st day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Norris Realty Co. by handing to and leaving a true and correct copy thereof with Michael Norris, General Manager Norris Realty Co. personally at Duluth in said District on the 5th day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Lesure Lumber Co. by handing to and leaving a true and correct copy thereof with

C. J. Lesure, President Lesure Lumber Co. personally at Duluth in said District on the 1st day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Franklin Lumber Co. by handing to and leaving a true and correct copy thereof with F. R. Webber, pres. Franklin Lumber Company personally at Duluth in said District on the 1st day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

33 United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Cloquet Lumber Co. by handing to and leaving a true and correct copy thereof with J. H. Henninger, Secy. of Cloquet Lumber Co. personally at Cloquet in said District on the 16th day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ...	1.68
	$3.68

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Angie C. Thomson by handing to and leaving a true and correct copy thereof with

Angie C. Thompson personally at Duluth in said District on the 21st day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Bertha M. Randall by handing to and leaving a true and correct copy thereof with Bertha M. Randall personally at Duluth in said District on the 18th day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
	2.06
Travel ...	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Chris Johnson by handing to and leaving a true and correct copy thereof with Chris Johnson personally at Duluth in said District on the 18th day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named John R. Randall by handing to and leaving a true and correct copy thereof with John

R. Randall personally at Duluth in said District on the 18th day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Joseph Nevins by handing to and leaving a true and correct copy thereof with Joseph Nevins personally at Duluth in said District on
34 the 18th day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named S. J. Cusson by handing to and leaving a true and correct copy thereof with S. J. Cusson personally at Duluth in said District on the 1st day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Konrad Erickson by handing to and leaving a true and correct copy thereof with Konrad Erickson personally at Duluth in said District on the 2d day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Subpoena on the therein-named LeRoy Brooks and W. C. McClure, co-partners, by handing to and leaving a true and correct copy thereof with W. C. McClure personally at Duluth in said District on the 5th day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Service ..	2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Jethro G. Mitchell by handing to and leaving a true and correct copy thereof with Jethro G. Mitchell personally at Duluth in said District on the 3d day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Olean Land Co. by handing to and leaving a true and correct copy thereof with Giles

Gilbert, President, Olean Land Company, personally at Duluth in said District on the 14th day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

COPY BOUND CLOSE IN CENTER

35 United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Stephen Thomas by handing to and leaving a true and correct copy thereof with Stephen Thomas personally at Duluth in said District on the 21st day of May, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named Johnson Wentworth Co. throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon them but the- cannot be found therein.

Dated at Duluth, this 22d day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within-named William O'Brien throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon him but he cannot be found therein.

Dated at Duluth, this 22d day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named B. C. Cook throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon him but he cannot be found therein.

Dated at Duluth, this 22d day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named Edward B. Manwaring throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon him but he cannot be found therein.

Dated at Duluth, this 22 day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena have made due and diligent search and inquiry for the within named Justus H. McLaughlin throughout the said District of Minnesota, Fifth Division, to serve the within Subpoena upon him but he cannot be found therein.

Dated at Duluth, this 22d day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

36 United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named Lucia A. Sylvester throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon her but she cannot be found therein.

Dated at Duluth, this 22d day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named Geo. K. Wentworth throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon him but be cannot be found therein.

Dated at Duluth; this 22d day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named Justin Wentworth throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon him but he cannot be found therein.

Dated at Duluth, this 22d day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named Otto Carlson throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon him but he cannot be found therein.

Dated at Duluth, this 22d day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named Waldo A. Avery, Trustee, throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon him but he cannot be found therein.

Dated at Duluth, this 22d day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named Walter G. Grimmer throughout
the said District of Minnesota, Fifth Division, to serve
37 the within Chancery Subpoena upon him but he cannot
be found therein.

Dated at Duluth, this 22d day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named Didrick Johnson throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena up him but he cannot be found therein.

Dated at Duluth, this 22d day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named Dan Maher throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon him but he cannot be found therein.

Dated at Duluth, this 22d day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named Elizabeth Peterson throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon her but she cannot be found therein.

Dated at Duluth, this 22d day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named June B. Noyes throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon him but he cannot be found therein.

Dated at Duluth, this 22d day of May, 1908.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named John B. Kehl throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon him but he cannot be found therein.

Dated at Duluth, this 22d day of May, 1908.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

38 United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named LeRoy Brooks throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon him but he cannot be found therein.

Dated at Duluth, this 22d day of May, 1908.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named Fred P. Brewer throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon him but he cannot be found therein.

Dated at Duluth, this 22d day of May, 1908.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named John L. Rupp throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon him but he cannot be found therein.

Dated at Duluth, this 22d day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named Joseph Picotte throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon him but he cannot be found therein.

Dated at Duluth, this 22d day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named George B. Morley throughout the said District of Minnesota, Fifth Division, to serve the within Chancery Subpoena upon him but he cannot be found therein.

Dated at Duluth, this 22d day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

United States of America,
District of Minnesota—ss.

I hereby certify and return that by virtue of the within Chancery Subpoena I have made due and diligent search and inquiry for the within named Waldo A. Avery through-
39 out the said District of Minnesota, Fifth Division, to
serve the within Chancery Subpoena upon him but he cannot be found therein.

Dated at Duluth, this 22d day of May, 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees 1.00.

Indorsed: Returned into the Clerk's office and filed this 23d day of May, A. D. 1900. Henry D. Lang, Clerk. By Thos. H. Pressnell, Deputy.

That on the 14th day of May, A. D. 1900, there was filed with said Clerk the Appearance of H. H. Hoyt, Esq., as Solicitor for certain Defendants therein named; which said Appearance is, in words and figures, as follows, to wit:

United States of America, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhauser, Plaintiffs,
vs.
Waldo A. Avery, George B. Morley, Olean Land Company, a corporation organized and doing business under the laws of the State of Minnesota, Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIllhargey, LeRoy Brooks, John B. Kehl, C. M. Hill Lumber Company, a corporation organized and doing business under the laws of the State of West Virginia, June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thomas, Edward J. Heath, Daniel Maher, Didrick Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee, Michael Kelley, Otto Carlson, Alger, Smith & Company, a corporation organized and doing business under the laws of the State of Michigan, Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a corporation organized and doing business under the laws of the State of Minnesota, Lucina A. Sylvester, Justin H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a corporation organized and doing business under the laws of Minnesota, S. J. Cusson, Johnson-Wentworth Company, a corporation organized and doing business under the laws of the State of Minnesota, Cloquet Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, Jethro G. Mitchell, LeRoy Brooks and W. C. McClure, as co-partners doing business under the firm name of Mitchel & McClure, Defendants.

The Clerk will enter my appearance for the following named
defendants—Waldo A. Avery, George B. Morley, W. C.
40 McClure, Ezra Richardson, Charles McIllhargey, LeRoy
Brooks, Joseph Nevins, Benjamin Grimm, Chris John-
son, Peter Bohan, Elizabeth Peterson, Angie C. Thomas, Ed-

ward J. Heath, Daniel Maher, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, trustee, Otto Carlson, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall Martin L. Fraser, Jethro G. Mitchell, Le Roy Brooks, and W. C. McClure as co-partners doing business under the firm name of Mitchell & McClure, Isaac Henry.

Dated May 14, 1900.

H. H. HOYT,
Defendants attorney,
310 Chamber of Commerce, Duluth, Minn.

Indorsed: Filed May 14th, 1900. Henry D. Lang, Clerk. By Margaret McKay, Deputy.

That on the 23d day of June, A. D. 1900, there was filed with said Clerk the Appearance of S. H. Moer and H. H. Hoyt, as Solicitors for Defendant S. J. Cusson, in said cause; which said Appearance is, in words and figures, as follows, to wit:

United States of America, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhauser, Plaintiffs,
vs.
Waldo A. Avery, George B. Morley, Olean Land Company, a corporation organized and doing business under the laws of the State of Minnesota, Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIllhargey, LeRoy Brooks, John B. Kehl, C. M. Hill Lumber Company, a corporation organized and doing business under the laws of the State of West Virginia, June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thomas, Edward J. Heath, Daniel Maher, Didrick Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee, Michael Kelly, Otto Carlson, Alger, Smith & Company, a corporation organized and doing business under the laws of the State of Michigan, Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a corporation organized and doing business under the laws of the State of Minnesota, Lucina A. Sylvester, Justin H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a corporation organized and doing business
41 under the laws of Minnesota, S. J. Cusson, Johnson-Wentworth Company, a corporation organized and doing business under the laws of the State of Min-

nesota, Cloquet Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, Jethro G. Mitchell, LeRoy Brooks and W. C. McClure, as co-partners doing business under the firm name of Mitchell & McClure, Defendants.

The Clerk will enter our appearance for S. J. Cusson, one of the defendants in the above entitled cause.

Dated June 22, 1900.

S. H. MOER and
H. H. HOYT,
Attorneys for S. J. Cusson
one of the above named defendants.

To Clerk of the Court.

Indorsed: Filed June 23rd, 1900. Henry D. Lang, Clerk. By Margaret McKay, Deputy.

That on the 2d day of July, A. D. 1900, there was filed with said Clerk the Appearance of Jacques & Hudson as Solicitors for certain Defendants therein named; which said Appearance is, in words and figures, as follows, to wit:

Circuit Court of the United States, District of Minnesota,
Fifth Division.

John A. Humbird and Frederick Weyerhauser, Complainants,
vs.
Waldo A. Avery et al., Defendants.

Praecipe for Appearance.

To the Clerk of the above named Court:

Please enter our appearance for the Defendants Franklin Lumber Company, and Frank R. Webber in the above entitled suit.

Dated July 2nd, 1900.

Yours &c.,
JAQUES & HUDSON,
Solicitors for Defendants Franklin Lumber Co.
and Frank R. Webber.

Indorsed: Filed July 2nd, 1900. Henry D. Lang, Clerk. By Margaret McKay, Deputy.

42 That further on the same day, to wit: on the 2d day of July, A. D. 1900, there was filed with said Clerk the Appearance of M. H. Stanford, Esq., as Solicitor for Defendant Lesure Lumber Company, in said cause; which said Appearance is, in words and figures, as follows, to wit:

Circuit Court of the United States, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhauser, Complainants,
vs. In Equity.
Lesure Lumber Company, et al., Defendants.

The Clerk of this Court will please enter my appearance as solicitor for the defendant, the Lesure Lumber Company, in the above entitled action.

Dated, July 2, 1900.

W. H. STANFORD,
Solicitor for Defendant, Lesure Lumber Company.
401-402 Exchange Building, Duluth, Minn.

Indorsed: Filed July 2nd, 1900. Henry D. Lang, Clerk. By Margaret McKay, Deputy.

That still further on the same day, to wit, on the 2d day of July, A. D. 1900, there was filed with the said Clerk the Appearance of Towne & Harris as Solicitors for certain Defendants therein named; which said Appearance is, in words and figures, as follows, to wit:

United States of America, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhauser, Complainants,
vs.
Waldo A. Avery et al., Defendants.

43 The Clerk will please enter our appearance as solicitors for the defendants Alger, Smith and Company and the Olean Land Company.

TOWNE & HARRIS,

Duluth, Minn., July 2, 1900.

Indorsed: Filed July 2nd, 1900. Henry D. Lang, Clerk. By Margaret McKay, Deputy.

That on the 13th day of July, A. D. 1900, there was filed with said Clerk the Joint Answer of Defendants Waldo A. Avery et al.; which said Answer, is, in words and figures, as follows, to wit:

44 The Circuit Court of the United States, for the District of Minnesota, Fifth Division.

To the Honorable, the Judges of the Circuit Court of the United States for the District of Minnesota, Sitting in Equity:

John A. Humbird and Frederick Weyerhauser, Complainants,
vs. In Equity.
Waldo A. Avery, George B. Morley, Olean Land Company, a corporation organized and doing business under the

laws of the State of Minnesota, Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIllhargey, Le Roy Brooks, John B. Kehl, C. M. Hill Lumber Company, a corporation organized and doing business under the laws of West Virginia, June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thomas, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee, Michael Kelley, Otto Carlson, Alger Smith and Company, a corporation organized and doing business under the laws of the State of Michigan, Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konard Erickson, Bertha M. Randall, Martin L. Frazer, Norris Realty Company, a corporation organized and doing business under the laws of the State of Minnesota, Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, S. J. Cusson, Johnson-Wentworth Company, a corporation organized and doing business under the laws of the State of Minnesota, Cloquet Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, Jethro G. Mitchell, LeRoy Brooks and W. C. McClure, as co-partners doing business under the firm name of Mitchell & McClure, Defendants.

The joint and several answers of Waldo A. Avery, George B. Morley, Ezra Richardson, William C. McClure, Charles McIllhargey, LeRoy Brooks, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohen, Elizabeth Peterson, Angie C. Thomas, Edward J. Heath, Daniel Maher, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee, Otto Carlson, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Jethro G. Mitchell, LeRoy Brooks, W. C. McClure as co-partners doing business under the firm name of Mitchell & McClure, S. J. Cusson and Isaac Henry, defendants, in the bill of complaint of John A. Humbird and Frederick Weyerhauser, complainants.

45 These defendants answer and say,

I.

That the defendants admit the facts as stated in the first, second, third and fourth paragraphs of said bill of complaint.

II.

That these defendants for further answer say that they do not know and cannot set forth as to their belief or otherwise, and therefore leave the complainants to their proof, as to whether the Northern Pacific Railroad Company definitely located the whole of its line of railroad, extending from a point on Lake Superior in the State of Wisconsin, westwardly to a point on Puget Sound, and thereafter duly constructed and completed its said railroad and telegraph line upon said line of definite location, in all respects as required by the provision of said Act of [of] Congress approved July 2nd, 1864, as stated in said complaint.

III.

And these defendants for further answer say that they do not know and cannot set forth as to their belief or otherwise and therefore leave the complainants to their proof, as to whether the lands situated in the State of Minnesota, opposite to and co-terminus with, and more than twenty but less than forty miles distance from said line of definite location of that portion of said Northern Pacific Railroad extending from Thomson Junction to Ashland, as filed on the 6th day of July, 1882, were all the lands described in the Schedule which is annexed to said bill of complaint and marked Exhibit "A."

And defendants further answering deny that between the 16th day of October, 1883, and the 10th day of November of said year, or at any other time before or after said dates, the Northern Pacific Railroad Company made selection of any of the lands thus described in the Exhibit "A" attached to said bill of complaint, or that said selections were made by said company in compliance with instructions of the secretary of the Interior, and under his direction, or that the said Northern Pacific Railroad Company ever filed in the United States District Land Office at Duluth, Minn., or in any other place any valid list of selections of any lands in accordance with the provisions of said Act of Congress, approved July 2, 1864, and the joint resolutions of May 31, 1870, or that all, or any part of the lands thus described in schedule "A" attached to complainants bill of complaint were thus selected as indemnity, in lieu of other lands excepted from its said grant, and defendants deny that at the date of filing of the lists as stated in said bill, there was any deficiency within the place limits of said grant that would require lands to be selected within the indemnity limits as aforesaid.

Defendants further say that they do not know and cannot set forth as to their belief or otherwise and therefore leave complainants to their proof, as to whether the Northern Pacific Railroad Company, at the date of the filing of the lists mentioned in the bill of complaint, paid the fees required in such cases, or whether the local officers certified to such lists or accepted or approved of the same or whether the said lands described in said Exhibit "A" attached to the complaint in this case were at the dates mentioned, public lands to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, or free from preemption or other claims or right, but defendants deny that at the date of filing the lists mentioned, or at any other time, the Northern Pacific Railroad Company had any rights whatever in any of the lands referred to in said Exhibit "A."

Defendants further answering say that they do not know and cannot set forth as to belief or otherwise and therefore leave the complainants to their proof as to whether the Northern Pacific Railroad Company for the purpose of complying with certain other instructions of the Secretary of the Interior did on the dates mentioned in said complaint, file in the
46 United States District Land Office at Duluth, certain re-
arranged lists in the manner referred to in said bill of complaint or otherwise, but defendants deny that each or any of the tracts described in said several indemnity selection lists, and each or any of the tracts, described in said Exhibit "A" attached to said complaint was selected by said railroad company, in lieu of a tract, or tracts, of corresponding size situated within the primary or place limits of the original grant to said railroad company within the State of Minnesota, that had been lost to the said railroad company by reason of having been granted, sold, reserved, occupied, preempted or otherwise disposed of, prior to the time when that part of the line of said road lying opposite to the same had been finally fixed, and located, or that the said Northern Pacific Railroad Company had become entitled to receive indemnity therefor. Defendants further answering say that they do not know and cannot set forth as to their belief or otherwise and therefore leave complainants to their proof as to whether at the final location of said road west of Thomson Junction, or the final location of the line of road extending eastward from said Thomson Junction to Ashland, there was any deficiency in the place limits of said grant within the State of Minnesota that would or did authorize said railroad company to select land in lieu of land lost within the place limits of said grant in either the first or second indemnity limits of said road, or that said selection was for the purpose of making good the deficiency so existing on account of said line of railroad in the State of Minnesota.

Defendants further answering, admit that no action has ever been taken by the Commissioner of the General Land Office, or the Secretary of the Interior upon said lists, or upon the selections in Exhibit "A" aforesaid except as hereinafter stated.

V.

Defendants further answering deny that the Northern Pacific Railroad Company ever became the owner or entitled to the possession of any or all the lands described in Exhibit "A" attached to said complaint, and defendants say they do not know and have no information whether said company did in the year 1898, or at any other time, convey all its rights, interest, or township in the lands thus described to the Northern Pacific Railway Co., or whether the Northern Pacific Railroad Company under its charter was authorized to sell and convey said lands, or whether the Northern Pacific Railway Company was authorized to purchase the same, or whether on the 19th day of January, 1900, or at any other time the said Northern Pacific Railway Company for a valuable consideration duly sold and conveyed by warranty deed to the complainants said lands.

And defendants further answering say that they do not know and cannot set forth as to their belief or otherwise and therefore leave said complainants to their proof as to whether at the time of the alleged execution, and delivery of the said deed to said complainants by the Northern Pacific Railway Company the Honorable Secretary of the Interior of the United States had, or had not caused to be prepared, or delivered to either of said railroad companies, or to anyone a list or lists of any of the tracts of lands which had been purchased or settled upon, or occupied opposite to or along any portion of the line of road of said Northern Pacific Railroad Company east of Thomson Junction aforesaid as provided by the Act of Congress mentioned in said complaint.

VI.

And these defendants further answering say they do not know and cannot set forth as to their belief or otherwise as to whether or not at the respective dates of the definite location of the various portions of the main and branch lines of said railroad as set forth in complainants Bill of Complaint. There were 10,624,745.27 acres or any other number of acres of land lost from the primary limits of said railroad grant to said company by reason of the exceptions contained in the Act of Congress of July 2nd, 1864, as alleged in the Bill of Complaint or otherwise.

47 And these defendants say they do not know and have no information or belief as to whether within the indemnity limits prescribed in said Act of Congress approved July 2nd, 1864, at the respective dates of definite location of said road, there were not more than 7,177,768.71 acres of land subject to selection under the terms of said Act as indemnity for lands excepted from said grant; And these defendants further say they do not know and cannot set forth as to their belief or otherwise as to how much land there was at the time of the definite location of said road, within the indemnity limits prescribed in said Act of Congress of July 2nd, 1864, subject to selection under the terms of said Act as indemnity for lands excepted from said grant and defendants therefore leave complainants to their proof as to the number of acres of land lost by said railroad company from said grant, at the respective dates of the definite location of said road, by reason of the exceptions contained in said Act of Congress, and as the number of acres subject to selection by said company as indemnity for land excepted from said grant under said Act of Congress approved July 2nd, 1864.

These defendants further answering say they do not know and cannot set forth as to their belief or otherwise, whether of the 10,624,746.27 acres of land alleged to have been lost as aforesaid from said grant not more than 2,887,076.57 acres were lost to and excepted from said grant subsequent to the passage and approval of said Act of July 2nd, 1864, or as to whether or not said 2,887,076.57 acres of said 10,624,746.27 acres so alleged to be lost as aforesaid, was the only portion thereof which could or can be satisfied under the provisions of the joint resolution of Congress approved May 31st, 1870, and defendants therefore leave complainants to their proof thereon.

And these defendants say they do not know and have no information as to whether the total area of lands in the indemnity limits of said grant to said railroad company subject to selection as indemnity at the respective dates of the definite location of the various portions of the line of said railroad lacked more than 550,000. or any other number of acres whatever of being sufficient to satisfy the losses of said grant and defendants therefore leave complainants to their proof thereon.

These defendants deny that by virtue of the premises and upon the definite location of the line of said railroad, as stated in paragraph 10 of complainants Bill of Complaint, or otherwise, the said Northern Pacific Railroad Company became the owner in fee of all the lands described in Exhibit "A" attached to the Bill of Complaint.

VII.

And defendants further answering deny that the lands in which these defendants or any of them are interested described in Exhibit "A" attached to the complaint were wrongfully and unlawfully by the proper officers of the land department permitted to be entered under various land laws of the United States, but allege that at the several dates of the entry the several tracts entered were at the date of such entry public lands, subject to be entered under the land laws of the United States and at the time of such entry the Northern Pacific Railway Company had no right, title, claim or interest in said lands; and defendants deny that the Northern Pacific Railroad Company, or its grantees, have any vested rights in any of said parcels of land, or any rights whatever, or that all or any of the proceedings connected with all or any of the entries and locations mentioned in Exhibit "A" were without notice to, or knowledge of, said Northern Pacific Railroad Company, or anyone claiming under it, or without any opportunity for said company, or its assigns to be heard in opposition thereto, but on the contrary the defendants allege that the Northern Pacific Railway Company and its grantees had full knowledge, and notice of every step that was taken in each and every case of the acquiring title to these lands by the locators thereof.

And defendants further answering say that at the date of the entry of the several tracts of land in which they are interested, such tracts and each and all of them were vacant public lands subject to entry under the land laws of the
48 United States—that the pretended list of selections mentioned in complainant's Bill of Complaint as made by the Northern Pacific Railroad Company had never been recognized, or approved by the Secretary of the Interior as the law required, that by an order of said Secretary of the Interior of date August 27, 1896, said pretended list of selections were cancelled, and the lands restored to the public domain, and made subject to entry, and settlement the same as other public lands, that the said Northern Pacific Railroad Company had knowledge of this fact, and that the lands had been restored to the public domain and that the Secretary of the Interior intended to and did allow parties to enter said land in the same manner that other public lands were entered; that parties made application under the several lands laws of the United States to purchase said land, and advertised as the law requires that at a date certain, mentioned in said notice the applicant would make proof before the local officers of the land office of his or her right to purchase the same, and all persons having adverse interest in such tract of land were notified to appear and show cause if any existed why the applicant should not

be allowed to purchase said land, and that at the time named in said notice the said company did not appear nor have they ever made any appearance or objection to the purchase thereof.

VIII.

And defendants further say that on the 13th day of November, 1895, the Secretary of the Interior, by a decision of that date, established the eastern terminus of the Northern Pacific Railroad Company for the adjustment of its land grant at some point not further east than Superior Wisconsin. That on August 27, 1896, the Secretary of the Interior fixed the eastern terminus of the land grant to said company at Duluth, and at the same time restored to the public domain and subject to entry all lands lying east of the line then established by said decision. That on January 23, 1897, the Secretary of the Interior caused to be prepared a diagram showing the line thus established, a copy of which was transmitted to the Register and Receiver of the Duluth Land District in which the lands in controversy are situated. That on the 17th day of July, 1897, the Commissioner of the United States General Land Office prepared a notice directed to said Register and Receiver. Said notice was approved by the Secretary of the Interior, and sent by said Commissioner to the Register and Receiver of the United States local Land Office, at Duluth, Minn., in which was noted that the decision of the Secretary aforesaid had the effect to restore to the public domain all lands lying east of said terminal, and directed the said Register and Receiver to give public notice of the same by publishing a notice referring to said Secretary's decision which in effect declared that all lands previously withdrawn on account of the grant to the Northern Pacific Railroad Company, and lying east of the terminal established at Duluth, were restored to the public domain, and were subject to disposal at the local United States Land Office at Duluth. That said notice was directed to be published for a period of thirty days, to the end that all persons interested might have opportunity to present any claims they might have to any of the lands thus affected by said decisions that the said Northern Pacific Railroad had full and complete notice and knowledge of the contents of said notice and the publication thereof. A copy of said notice is hereunto attached and made part of this answer, and marked Exhibit "A." That said notice was by said Register and Receiver duly published as directed, and after the expiration of the period of thirty days, and after the restoration of these lands to the public domain, the lands in which the said defendants are interested were under the land laws of the United States duly and legally entered, and

each and every location was previous to January 1, 1898, and after such location such proceedings were taken by said locator that a certificate was duly issued in the usual form to said locator and in some cases patents were issued thereon for said lands. That from the date of the publication of said notice referred to, and up to the date of the commencement of this suit, neither the Northern Pacific Railroad Company, nor the complainants, nor any other party or person, made or filed any claim to any of the lands here in controversy
49 with the Register and Receiver at Duluth, Minn., or in the General Land Office at Washington, D. C., adverse to the claim of the locator of such particular description, but that the entry man without opposition or objection from said Northern Pacific Railroad Company, or its grantees, was allowed to enter said land, and establish his claim thereto, and pay the amount for the same required by the government and to sell and dispose of said claim at its full value to bona fide purchasers thereof. That said locators were each actual and bona fide settlers over the age of 21 years and citizens of the United States, each thus and otherwise having all the qualifications required by the land laws of the United States to obtain patents from the United States for said several descriptions of land by them located.

That the answering defendants herein as grantees of the original locators of said lands, either by deed or contract, were and are bona fide purchasers for value of such lands or interest therein, and had no notice or knowledge of any right or claim of the Northern Pacific Railroad Company therein. That said lands are all outside of the place limits of the grant to the Northern Pacific Railroad Company, but whether the lands in controversy are within the first or second indemnity limits said defendants do not know and cannot say either on their belief or otherwise and leave the said plaintiffs to their proof. That on the 17th day of April, 1897, by order of the Secretary of the Interior, there was endorsed upon each separate list of the selection of lands mentioned in said bill of complaint, as filed in the Duluth Local U. S. Land Office, the following words "cancelling the within list to the extent of the tracts of, and outside, the terminal limits of the grant to the Northern Pacific Railroad Company" and defendants aver that each and every description of land in which defendants are interested in this controversy are situated outside of and east of the terminal limits of the grant to the Northern Pacific Railroad Company as established by the Secretary as above referred to or under the Act of Congress, July 2, 1864 or Joint Resolution of May 31, 1871.

And these defendants further answering say, that the grant to the Northern Pacific Railroad Company has not as yet been adjusted by the Secretary of the Interior, that defendants are informed and believe the fact to be that on the adjustment of said grant there will be found to be no deficiency in said grant, but there will remain a large quantity of land now withheld from entry that will be restored to the public domain. That there are now and were at the time of the commencement of this action many thousands of acres of vacant public lands in the odd sections within the first and second indemnity limits of the Northern Pacific Railroad Company, which could be used for indemnity for lands lost within the place limits of said grant.

IX.

These defendants further answering say they are informed and believe it to be true that the Secretary of the Interior having refused to in any manner recognize the claimed rights of the Northern Pacific Railroad Company in and to the lands in controversy and other lands in Minnesota and conflicting claims having arisen as to these and other lands within the grant of said company.

The said railroad company caused to be introduced in the Congress of the United States a bill, having particular reference to the lands in controversy, and all other lands of like character, entitled: "An Act entitled an Act to facilitate the adjustment by the land department of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company" and urged the Secretary of the Interior to consent to the passage of said bill, and that after certain modifications had been made in the original bill, as first presented, the same became a law with the approval of the President of the United States on the 1st day of July 1898.

That by the terms of said Act among other things it is provided "That where prior to January first, 1898, the whole or any part of an odd numbered section, in either the granted or the indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of the grantee or its lawful successor is claimed to have attached by definite location or selection, has been purchased directly from the United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department, and where purchaser, settler, or claimant refuses to transfer his entry as hereinafter provided, the railroad grantee or its successor in interest, upon a proper relinquishment thereof, shall be entitled to select in lieu of the land relinquished an equal quantity of public lands, surveyed or unsurveyed not mineral or reserved and valuable for stone, iron or coal and free from valid adverse claim or not occupied by settlers at the time of such selection, situated within any State or Territory into which said railroad grant extends and patents shall issue for the land so selected as though it had been originally granted; * * Provided, however, that the Secretary of the Interior shall from time to time ascertain and as soon as conveniently may be done, caused to be prepared and delivered to the said railroad grantees or its successors in interest a list or lists of the several tracts which have been purchased or settled upon or occupied as aforesaid, and are now claimed by said purchasers or occupants, their heirs [of] assigns, according to the smallest Government subdivisions; and all right, title and interest of the said railroad grantee or of its successors in interest in and to any of such tracts, which the said roalroad grantee or its successors in interest may relinquish hereunder shall revert to the United States and such tracts shall be treated, under the laws thereof, in the same manner as if no right thereto had even vested in said railroad grantee and all qualified persons who have occupied and may be on said lands as herein provided, or who have purchased said lands in good faith as aforesaid, their heirs and assigns shall be permitted to prove their titles on said lands according to law, as if said grant had never been made, and upon such relinquishments said Northern Pacific Railroad Company or its lawful successors in interest may proceed to select, in the manner hereinbefore provided, lands in lieu of those relinquished, and patents shall issue therefor:

Provided further, That the railroad grantee or its successor in interest shall accept said list or lists so to be made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it, but it shall not be bound to relinquish lands sold or contracted by it or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron or coal."

And these defendants further answer and say that the Northern Pacific Railroad Company and its successor in interest the Northern Pacific Railway Company have ever since the passage and approval of said Act of July 1st, 1898, been acting and operating under said Act, that said companies have made numerous relinquishments thereunder and have taken lieu lands in place of the lands so relinquished by them under the terms and provisions of said Act; that the said Northern Pacific Railroad Company and its successor in interest the

Northern Pacific Railway Company have in all things accepted and adopted the terms and conditions of the said Act of July 1st, 1898, and are now and were long prior to the time complainants claim to have purchased the lands in controversy, accepting and exercising the rights and privileges conferred upon them thereby. And these defendants further answering say that the complainants John A. Humbird and Frederick Weyerhauser took, accepted and received from the said Northern Pacific Railway Company the deed of conveyance set forth and described in their bill of complaint, with full knowledge and notice of the fact that the said Northern Pacific Railroad Company had aided in securing the passage of said Act of July 1st, 1898, and that it and its successor in interest, had thereafter accepted, adopted and ratified the same and had in all ways availed themselves of the benefits conferred thereby. And these defendants further answering say that there was issued from the General Land Office at Washington, D. C., a circular containing "Regulations under the Act of July 1, 1898, (30 Stat. 597, 620), to facilitate the
adjustment by the Land Department of conflicting
51 claims to lands within the limits of the grant to the
Northern Pacific Railroad Company which circular was duly approved by the Secretary of the Interior, February 14th, 1899, and that said circular contains the land departments construction of said Act of July 1st, 1898, and provides the method, practice and procedure to be followed under said Act, that the said Northern Pacific Railroad Company and its successor in interest the Northern Pacific Railway Company accepted the construction placed upon said act by the land department and consented thereto and to all the rules and regulations contained in said circular and have under such rules and regulations secured lieu lands for those relinquished under the Act of July 1st, 1898.

Sec. 9 of said circular is as follows, to wit:—

"The railroad claim is one which arises from the definite location of the line of railroad if the land is within the primary limits of the grant, or which arises from a lieu selection if the land is within the indemnity limits, and is one which, in the absence of all individual claims, would enable the railroad claimant to obtain full title to the land."

Sec. 10 provides that, "The purpose of the act is to avoid further strife and contention before the Land Department between the railroad claimant upon the one hand and individual claimants upon the other hand, and to that end the Act extends alternately to the individual claimant and the railroad claimant an opportunity to acquire other lands of equal area in lieu of those in contest. The privilege of making a lieu selection is not dependent upon success or failure in the contest, but rather upon the existence of a contest or controversy which is intended to be disposed of without subjecting the parties to the delay, expense and inconvenience incident to the further prosecution."

Sec. 17 of said circular is as follows:—"The option of relinquishing the lands in contest (controversy) and selecting other lands in lieu thereof is by law first extended to the individual claimant, and if he elects to hold the lands which are in contest (controversy) the railroad claimant will be called upon to relinquish the same and to select other lands in lieu thereof."

That after the issuance of said circular and at the request of the Northern Pacific Railroad Company and to the end that the benefits intended to be extended by said act might be still secured to those entitled thereto, and to avoid possible and unnecessary litigation in the Court as a result of the inadvertent or erroneous issuance of patents since July 1, 1898, in such cases the following regulations was added to those adopted February 14, 1899, under said act, namely "Where any portion of an odd numbered section within the limits of the grant to the Northern Pacific Railroad Company coming within the provisions of the act of July 1, 1898, as here construed, has been patented without following the provisions of that act, the individual claimant will, notwithstanding the issuance of such patent, be advised in the manner prescribed by paragarph 18, of the option accorded him by said act. If the patent was issued to him and he elects to relinquish his claim he will be required to make reconveyance of the land to the United States in the manner prescribed by paragraph 24, 25 and 26; but if he elects to retain the land patented it will be listed according to paragraph 23, with a view to its relinquishment by the railroad company. If the patent was issued to the railroad company, and the individual claimant elects to retain the land so patented the company will be required to make reconveyance thereof to the United States according to paragraphs 24 and 26, whereupon the individual claimant may perfect title thereto and the railroad company may select other lands in lieu thereof as in other cases."

And these defendants allege that the above provision of the rules and regulations heretofore issued by the Land Department, at Washington, was thus amended at the special instance and request of the Northern Pacific Railroad Company, and by so doing the Northern Pacific Railroad Company

adopted this form and mode of adjusting its grant, and that all the land claimed by the defendants in this controversy, come within the provisions of the Act of Congress of July 1, 1898, and the rules and regulations of the Land De-
52 partment governing the same, and the defendants say that if it should appear that the Northern Pacific Railroad Company had any right, title or interest in and to any of the lands claimed by these defendants in this controversy these defendants refuse to relinquish the same and hereby give notice to complainants that they will retain said land under the terms and provisions of said Act of July 1st, 1898.

And these defendants further say that they believe it to be true that the said [complaints] are not bona fide purchasers of the land described in Exhibit "A" attached to said complaint; that these defendants believe that the paper writing of the 19th day of January, 1899, purporting to be a warranty deed from the Northern Pacific Railway Company to the complainants was given to the complainants without consideration, under a secret understanding and agreement that the plaintiffs would not be required to pay the consideration agreed upon if the plaintiffs title should fail; that this action is a speculative one on the part of the plaintiffs and entered into with full knowledge of all the facts above recited, and the rights of defendants in said lands.

IX.

And these defendants further answering say they deny that all or any of the lands in which these defendants are interested and described in Exhibit "A" of complainants Bill of Complaint were wrongfully and unlawfully permitted by the proper officers of the Land Department of the United States to be entered under various land laws of the United States and final certificates of such entries were issued to the several persons entering the same; and these defendants aver and charge the truth to be that all entries made of lands in which these defendants are interested were rightfully and lawfully accepted and received by said Land Department before January 1, 1898, and that all things done in and about said entries was in compliance with law and the rules and regulations of said Department.

X.

And these defendants further answering say they admit all the allegations of paragraph 12 of the Bill of Complaint, save only that they deny that the Northern Pacific Railroad Company or its grantees have or ever had any vested or other rights either in law or equity in and to any of the lands described in Exhibit "A" of Bill of Complaint and in which these defendants have or claim to have any interest.

XII.

And these defendant further answering say they admit that they are claiming all the rights of ownership either legal or equitable with which they purport to have been invested by the several instruments, conveyances or contracts shown by Exhibit "A" of the Bill of Complaint.

XIII.

And these defendants further answering say, they deny that they had any notice or knowledge of the claimed rights of the Northern Pacific Railroad Company or its assigns in and to the lands in controversy and deny that they had any notice or knowledge of the facts alleged in the Bill of Complaint with reference to the grant of lands to said Northern Pacific Railroad Company or the location and construction of its line or lines of railroad as stated in the Bill of Complaint or of its selections of lands as therein stated or otherwise.

XIV.

And these defendants further answering say, they deny that all or any of the said entries and location of lands referred to in Exhibit "A" of the Bill of Complaint were allowed and the final certificates (and so far as issued the patents) issued under a mistake of law founded upon a certain erroneous ruling by the Secretary of the Interior to the effect that the said Northern Pacific Railroad Company and its successors in interest were not entitled to any lands by virtue of said Act of Congress, approved July 2nd, 1864, and said joint resolution approved May 31st, 1870, granting lands to said Northern Pacific Railroad Company east of that point on the line of said Northern Pacific Railroad where the same crosses the
53 line of the St. Paul & Duluth Railroad known [a]
Thomson Junction. And these defendants deny that the accuracy of such ruling, that is, to say, the question at what point is the eastern terminus of the land grant of the said railroad company under the Act of Congress and joint resolution aforesaid, is the only question of law or fact at issue between complainants and these defendants. And these defendants say that they are informed and believe it to be true that the said Northern Pacific Railroad Company exclusive of all the lands in controversy have received many thousands of acres of land in excess of what said company were

entitled to receive under said Act of Congress of July 2nd, 1864 and said joint resolution of May 31st, 1870.

XV.

And these defendants further answering say they admit the lands in controversy and in which they are interested are largely valuable for pine timber but deny that they have cut or removed any timber therefrom and deny that they have any intentions of so doing until such time as the controversy concerning the title to said lands shall be finally determined by the courts.

And these defendants hereby accept the tender of complainants, made in their Bill of Complaint for answer of these defendants without oath and aver that they have full, true and direct answer made to all and singular the matters contained in said Bill of Complaint so far as they have any knowledge or information thereon.

These defendants therefore pray that it may be determined, adjudged and decreed that these complainants have no right, title or interest in and to any of the lands in controversy in which these defendants are interested and for such other and further relief as in equity may seem just and proper to this honorable court and for their reasonable costs and charges allowed in this behalf.

H. H. HOYT and S. H. MOER,
Solicitors and of Counsel for Defendants named in caption of answers, 700-701 Torrey Building, Duluth, Minn.

Due and personal service by copy of the above & foregoing Answer is hereby admitted this 12th day of July, 1900.

BILLSON, CONGDON & DICKINSON &
H. OLDENBERG,
Solicitors & of Counsel for Complainants.

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EXHIBIT A.

Department of the Interior,
General Land Office,
Washington, D. C., July 17, 1897.
Register and Receiver,
Duluth, Minn.

Sirs:—On August 27, 1896 the Secretary of the Interior rendered a decision wherein he held that the initial point on Lake Superior or the eastern terminus of the grant to the Northern Pacific Railroad Company was at Duluth, Minnesota. and on December 24, 1896, he approved a diagram prepared by this office showing the eastern terminal of the grant.

On January 23, 1897, a copy of so much of said diagram as related to, or affected lands within, your district, was transmitted to you for the use and guidance of your office.

The decision of the Secretary aforesaid had the effect of restoring to the public domain all lands lying east of said terminal which had heretofore been withdrawn on account of the grant to said railroad company. Therefore, to the end that all persons interested may have an opportunity to present any claims they may have to any of these lands, you will cause to be published for the period of thirty days in some newspaper of general circulation in their vicinity, a notice referring to said Secretary's decision which in effect declared that all lands previously withdrawn on account of the grant to the Northern Pacific Railroad Company and lying east of the terminal established at Duluth, are restored to the public domain and are subject to disposal at your office. It should be specifically stated in said notice that all persons claiming rights, under the provisions of the Act of March 3, 1887, (24 Stat. 556) through purchase from the railroad company, should come forward and assert their claims at the earliest possible date in order to avoid conflicts which will necessarily arise through entries made under the general land laws, your office having no information as to the tracts likely to be claimed under said act.

The receiver, as disbursing officer, will pay the cost of the publication and forward a copy of the notice, with proof of publication as his voucher for the disbursement.

Approved: BINGER HERMANN,
C. N. BLISS, Commissioner.
Secretary of the Interior.

Indorsed: Filed July 13th, 1900. Henry D. Lang, Clerk,
By Margaret McKay, Deputy.

55 That on the 24th day of July, A. D. 1900, there was filed with said Clerk a Praecipe for an Alias Chancery Subpoena in said cause; which said Praecipe is, in words and figures, as follows, to wit:

Circuit Court of the United States, District of Minnesota, 5th Division.

John A. Humbird & Frederick Weyerhaeuser
vs.
Waldo A. Avery et al.

Praecipe for Alias Subpoena.

To the Clerk of the above named Court:

Please issue Alias Subpoena in the above cause.

BILLSON, CONGDON & DICKINSON,
Attys. for Plffs.

Indorsed: Filed July 24th, 1900. Henry D. Lang, Clerk. By Margaret McKay, Deputy.

That on the same day, to wit, on the 24th day of July, A. D. 1900, an Alias Chancery Subpoena was issued by said Clerk, and that on the 26th day of July, A. D. 1900, said Subpoena was returned into Court by the Marshal of said District and filed in said cause; which said Subpoena and Return are, in words and figures, as follows, to wit:

56 United States of America, District of Minnesota, Fifth Division.

The President of the United States of America: To Waldo A. Avery, George B. Morley, Olean Land Company, a corporation organized and doing business under the laws of the State of Minnesota, Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, LeRoy Brooks, John B. Kehl, C. M. Hill Lumber Company, a corporation organized and doing business under the laws of the State of West Virginia, June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee, Michael Kelley, Otto Carlson, Alger, Smith & Company, a corporation organized and doing business under the laws of the State of Michigan, Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a corporation organized and doing business under the laws of the State of Minnesota, Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, S. J. Cusson, Johnson-Wentworth Company, a corporation organized and doing business under the laws of the State of Minnesota, Cloquet Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, Jethro G. Mitchell, LeRoy Brooks and W. C. McClure, as co-partners doing business under the firm name of Mitchell & McClure—Greeting:

You are hereby commanded to be and appear at Rules, to be held at the office of the clerk of the Circuit Court of the United States, for the District of Minnesota, on the first Monday of September next, at the City of Duluth, then and there to answer the Bill of Complaint of John A. Humbird and Frederick Weyerhauser, filed against you on the 17th day of April, A. D. 1900: hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 24th day of July, 1900. Issued at my office in the City of Duluth, under the seal of said Circuit Court, the day and year last aforesaid.

[Seal of U. S.
Circuit Court.]

HENRY D. LANG, Clerk,
By Thos. H. Pressnell, Deputy.

Memorandum: The above named defendants to enter their appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken pro confesso.

HENRY D. LANG, Clerk,
By Thos. H. Pressnell, Deputy.

BILLSON, CONGDON & DICKINSON,
Complainants Solicitors.

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Alias Chancery Subpoena on the therein-named Johnson-Wentworth Company by handing to and leaving a true and correct copy thereof with S. S. Johnson, President of said Company, at Cloquet in said District on the 25th day of July, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal,
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	$1.62
	$3.62

57 Indorsed: Returned into the Clerk's office and filed this 26th day of July A. D. 1900. Henry D. Lang, Clerk By Margaret McKay, Deputy.

58 That on the 28th day of July, A. D. 1900, there was filed with said Clerk a Petition for and an Order of Court allowing an Amendment to the Bill of Complaint in said cause; which said Petition and Order, together with the endorsements thereon, are, in words and figures, as follows, to wit:

Circuit Court of the United States, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants,
vs. In Equity.
Waldo A. Avery, George B. Morley, et al., Defendants.

The Honorable the Judges of said Court:

The petition of the complainants above named respectfully shows, that in this cause, which was brought by the complainants to remove from their title to certain lands situate in said district, certain clouds thereon, occasioned by certain adverse claims and proceedings of the defendants, and for certain other relief incidental thereto, the subpoena was returnable on the first Monday in July of the current year; that on the said return day a number of the defendants in said suit caused notices of their appearance to be filed with the Clerk of said Court, and that subsequently to the said date and during the said month of July, a portion of the said defendants have filed answers to the bill of complaint, but that no replication has been filed in said cause, nor will the time for replication expire, as to any of the defendants until the August Rule Day. That the said suit involves the validity of certain selections of lands made by the Northern Pacific Railroad Company under an Act of Congress July 2nd, 1864, granting lands to said Company, and the joint resolution of Congress May 31st, 1870, establishing second indemnity limits for the selection of lands under the said act. That a portion of the lands, the title to which is involved in this cause, 59 lie within the said second indemnity limits, and that with respect to lands so situated your petitioners are advised and believe that the following allegation, which was inadvertently omitted from their bill of complaint, should have been inserted therein in order to fully present the facts of the case and complainants rights in the premises, to wit:

"That as to all lands so lost, and in lieu of which selections were made within the second indemnity limits aforesaid, the same had been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of by the United States Subsequently to the passage of aforesaid act of July 2nd, 1864."

That the said allegation can be appropriately inserted in the bill in the seventh paragraph thereof, immediately after the words "whereby the said Northern Pacific Railroad Company became entitled to receive indemnity therefor" in the Twenty-first folio.

Wherefore, your petitioners pray, that an order may be made permitting, prior to replication your petitioners to amend their said bill by inserting the said allegation therein at the point above mentioned, and your petitioners waive answer to the allegations so to be inserted, by any of the defendants.

BILLSON, CONGDON & DICKINSON,
Attorneys for Complainants.

State and District of Minnesota,
County of St. Louis—ss.

William W. Billson, being first duly sworn, deposes and says that he is one of the attorneys for the complainants in the above entitled cause; that he has read the foregoing petition and knows the contents thereof, and that the same is true.

WM. W. BILLSON.

Subscribed and sworn to before me this 26th day of July, A. D. 1900.

[Notarial Seal] JAMES WANLESS,
Notary Public, St. Louis County, Minn.

60 Circuit Court of the United States for the District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants,
vs. In Equity.
Waldo A. Avery and George B. Morley, et al., Defendants.

On reading and filing the annexed petition of the complainants in the above cause, it appearing to the court that the allegation referred to in said petition is material and was by inadvertence omitted from the bill, and that the time for replication has not expired.

It is ordered that the complainants have leave to amend their bill as prayed in their said annexed petition, and that such amendment may be made by interlining same in the twenty-first folio of the original bill, as proposed in said petition; and that no answer to said allegation shall be necessary on the part of the [of the] defendants, such answer having been waived by the complainants.

Let a copy of this order and of said petition be served on the attorneys for defendants within ten days.

Dated July 27, 1900.

WM. LOCHREN, Judge.

Indorsed: Service of within order admitted this 28th day of July, 1900. H. H. Hoyt, S. H. Moer, Solicitors for — Attorneys for parties for whom we have appeared and answered. M. H. Stanford, Attorney for Lesure Lumber Co. Jaques & Hudson, Attorneys for Franklin Lumber Co. and Frank R. Webber. Towne & Harris, Attorneys for Alger, Smith & Co., and Olean Land Co. Filed July 28th, 1900. Henry D. Lang, Clerk. By Margaret McKay, Deputy.

61 That on the 30th day of July, A. D. 1900, there was filed with said Clerk a Praecipe for Alias Chancery Subpoena No. 2, in said cause; which said Praecipe is, in words and figures, as follows, to wit:

Circuit Court of the United States, District of Minnesota, 5th Division.

John A. Humbird & Frederick Weyerhaeuser
vs.
Waldo A. Avery et al.

Praecipe for Subpoena.

To the Clerk of the above named Court:

Please issue a pluries subpoena in above entitled cause, for service on Defts. Wm. O'Brien & Justus H. McLaughlin.

BILLSON, CONGDON & DICKINSON &
H. OLDENBERG,
Solicitors for Complainants.

Indorsed: Filed July 30th, 1900. Henry D. Lang, Clerk. By Thos. H. Pressnell, Deputy.

That on the same day, to wit, on the 30th day of July, A. D. 1900, there was issued by said Clerk, Alias Chancery Subpoena No. 2, in said cause, and that on the 4th day of August, A. D. 1900, said subpoena was returned into court by the Marshal of said District with his return attached thereto; which said subpoena and return are, in words and figures, as follows, to wit:

62 United States of America, District of Minnesota, Fifth Division.

The President of the United States of America To Waldo A. Avery, George B. Morley, Olean Land Company, a corporation organized and doing business under the laws of the State of Minnesota, Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, LeRoy Brooks, John B. Kehl, C. M. Hill Lumber Company, a corporation organized and doing business under the laws of the State of Wes Virginia, June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohon, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee, Michael Kelley, Otto Carlson, Alger, Smith & Company, a corporation organized and doing business under the laws of the State of Michigan, Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a corporation organized and doing business under the laws of the State of Minnesota, Lucius A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, R. C. Cooke, William O'Brien, Franklin Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, S. J. Cusson, Johnson-Wentworth Company, a corporation organized and doing business under the laws of the State of Minnesota, Cloquet Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, Jethro G. Mitchell, LeRoy Brooks and W. C. McClure, as copartners doing business under the firm name of Mitchell & McClure—Greeting:

You are hereby commanded to be and appear at Rules, to be held at the office of the clerk of the Circuit Court of the United States, for the District of Minnesota, on the first Monday of September next, at the City of Duluth, then and there to answer the Bill of Complaint of John A. Humbird and Frederick Weyerhaeuser, filed against you on the 17th day of April, A. D. 1909; hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 20th day of July, 1909. Issued at my office in the City of Duluth, under the seal of said Circuit Court, the day and year last aforesaid.

[Seal of U. S. Circuit Court.]

HENRY D. LANG, Clerk.
By Thos. H. Pressnell, Deputy.

Memorandum: The above named defendants to enter their appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken pro confesso.

HENRY D. LANG, Clerk.
By Thos. H. Pressnell, Deputy.

BILLSON, CONGDON & DICKINSON,
Complainants' Solicitors.

63 United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named Defendant William O'Brien by handing to and leaving a true and correct copy thereof with him personally at the City of Saint Paul in said District on the 3rd day of August, A. D. 1900.

WILLIAM H. GRIMSHAW, U. S. Marshal.
By T. J. Sheehan, Deputy.

Service	2.00
Travel	.12
	2.12

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Chancery Subpoena on the therein-named James H. McLaughlin by handing to and leaving a true and correct copy thereof with James H. McLaughlin personally at Duluth in said District on the 31st day of July, A. D. 1900.

WM. H. GRIMSHAW, U. S. Marshal.
By Paul Sharvy, Deputy.

Fees	2.00
Travel ..	.06
	2.06

Indorsed: Returned into the Clerk's office and filed this 4th day of August, A. D. 1900. Henry D. Lang, Clerk. By Margaret McKay, Deputy.

That on the 4th day of August, A. D. 1900, there was filed with said Clerk the Answer of Defendant Franklin Lumber Company, in said cause; which said Answer is, in words and figures, as follows, to wit:

Circuit Court of the United States for the District of Minnesota, Fifth Division.

64 John A. Humbird and Frederick Weyerhaeuser, Complainants,
vs. In Equity.
Waldo A. Avery, George S. Shaw, Cloquet Land Company, a corporation organized and doing business under the laws of the State of Minnesota, Joseph L. [illegible], John J. [illegible], Fred P. [illegible], W. C. [illegible], E. E. [illegible], Charles [illegible], LeRoy Brooks, John E. [illegible], C. N. Nelson Lumber Company, a corporation organized

and doing business under the laws of the State of West Virginia, June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee, Michael Kelley, Otto Carlson, Alger, Smith & Company, a corporation organized and doing business under the laws of the State of Michigan, Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a corporation organized and doing business under the laws of the State of Minnesota, Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, S. J. Cusson, Johnson-Wentworth Company, a corporation organized and doing business under the laws of the State of Minnesota, Cloquet Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, Jethro G. Mitchell, LeRoy Brooks and W. C. McClure, as co-partners doing business under the firm name of Mitchell & McClure, Defendants.

Now comes the defendant, Franklin Lumber Company, and for an answer to the amended bill of the complainants herein, says:

1st. That it admits the allegations contained in the 1st, 2nd, 3rd, and 4th sub-divisions of said complaint.

2nd. That it denies that it has knowledge or information sufficient to form a belief as to whether the allegations contained in the 5th, 6th, 7th, 8th, and 10th sub-divisions of said complaint are true or not.

3rd. As to the 9th sub-division of said bill of complaint, this defendant denies that the said Northern Pacific Railroad Company ever became the owner or was ever entitled to the possession of the lands in said "Exhibit A" attached to said complaint, described, and as to all the other allegations in said sub-division contained, this defendant denies that it has any knowledge or information sufficient to form a belief as to whether the same are true or not.

65 4th. As to sub-division 11 of said complaint, this defendant admits that the proper officers of the Land Department of the United States permitted the lands de-

scribed "Exhibit A" attached to said complaint to be entered under the various land laws of the United States, but denies that said land officers did so wrongfully or unlawfully, and as to all the other allegations in said sub-division contained, this defendant denies that it has any knowledge or information sufficient to form a belief as to whether the same are true are not.

5th. As to the 12th sub-division of this complaint, this defendant admits all the allegations therein contained down to the word "and that" in the 7th line of the 42nd folio of said complaint. This defendant denies all the other allegations in said sub-division contained.

6th. As to the 13th sub-division of said complaint, this defendant admits all the allegations contained therein down to and including the 9th line thereof, and denies all the other allegations in said sub-division contained.

7th. As to the 14th sub-division of said complaint, this defendant denies that all or any of the said entries and locations of lands referred to in "Exhibit A" of the complaint, were allowed and the final certificates (and so far as issued the patents) issued under a mistake of law, founded upon certain erroneous ruling by the Secretary of the Interior to the effect that the said Northern Pacific Railroad Company and its successors in interest were not entitled to any lands by virtue of said act of Congress approved July 2, 1864, and said joint resolution approved May 31, 1870, granting lands to said Northern Pacific Railroad Company east of that point on the line of said Northern Pacific Railroad where the same crosses the line of the St. Paul & Duluth Railroad known as Thompson Junction. And this defendant denies that the accuracy of such ruling, that is, to say the question at what point is the Eastern terminus of the land grant of the said Railroad Company under the act of Congress and joint resolution 66 aforesaid, is the only question of law or fact at issue between complainants and this defendant; and this defendant says that it is informed and believes it to be true that the said Northern Pacific Railroad Company, exclusive of all the lands in controversy, have received many thousands of acres of land in excess of what said company was entitled to receive under said act of Congress of July 2, 1864, and said joint resolution of May 31, 1870.

8th. As to the 15th sub-division of said complaint, this defendant admits that the lands in controversy and in which it is interested are largely valuable for pine timber but deny that it has cut or removed any timber therefrom, and deny that it has any intention of so doing until such time as the controversy concerning the title of said land shall be finally determined by the Courts.

9th. And defendant further answering says that at the date of the entry of the several tracts of land in which it is interested, such tracts and each and all of them were vacant public lands subject to entry under the land laws of the United States—that the pretended list of selections mentioned in said Complaint as made by the Northern Pacific Railroad Company had never been recognized, or approved by the Secretary of the Interior as the law required, that by an order of said Secretary of the Interior of date August 27, 1896, said pretended list of selections were cancelled, and the lands restored to the public domain, and made subject to entry, and settlement the same as other public lands, that the said Northern Pacific Railroad Company had knowlege of this fact, and that the lands had been restored to the public domain and that the Secretary of the Interior intended to and did allow parties to enter said land in the same manner that other public lands were entered; that parties made application under the several land laws of the United States to purchase said land, and advertised as the law requires that at a date certain, mentioned in
said notice the applicant would make proof before the
67 local officers of the land office of his or her right to pur-
chase the same, and all persons having adverse interest
in such tract of land were notified to appear and show cause if any existed why the applicant should not be allowed to purchase said land, and that at the time named in said notice the said company did not appear nor have they ever made any appearance or objection to the purchase thereof.

10th. And defendant further says that on the 13th day of November, 1895, the Secretary of the Interior, by a decision of that date,, established the eastern terminus of the Northern Pacific Railroad Company for the adjustment of its land grant at some point not further east than Superior Wisconsin. That on August 27, 1896, the Secretary of the Interior fixed the eastern terminus of the land grant to said company at Duluth, and at the same time restored to the public domain and subject to entry all lands lying east of the line then established by said decision. That on January 23, 1897, the Secretary of the Interior caused to be prepared a diagram showing the line thus established, a copy of which was transmitted to the Register and Receiver of the Duluth Land District in which the lands in controversy are situated. That on the 17th day [day] of July, 1897, the Commissioner of the United States General Land Office prepared a notice directed to said Register and Receiver. Said notice was approved by the Secretary of the

Interior, and sent by said Commissioner to the Register and Receiver of the United States local land office, at Duluth, Minn., in which was noted that the decision of the Secretary aforesaid had the effect to restore to the public domain all lands lying east of said terminal, and directed the said Register and Receiver to give public notice of the same by publishing a notice referring to said Secretary's decision which in effect declared that all lands previously withdrawn on account of the grant to the Northern Pacific Railroad Company, and lying east of the terminal established at Duluth, were restored to the public domain, and were subject to disposal at the local United States Land Office at Duluth. That 67 said notice was directed to be published for a period of thirty days, to the end that all persons interested might have opportunity to present any claims they might have to any of the lands thus affected by said decisions that the Northern Pacific Railroad had full and complete notice and knowledge of the contents of said notice and the publication thereof. A copy of said notice is hereunto attached and make part of this answer, and marked Exhibit "A." That said notice was by said Register and Receiver duly published as directed, and after the expiration of the period of thirty days, and after the restoration of these lands to the public domain, the lands in which the said defendant is interested were under the land laws of the United States duly and legally entered, and each any every location was previous to January 1, 1898, and after such location such proceedings were taken by said locator that a certificate was duly issued in the usual form to said locator and in some cases patents were issued thereon for said lands. That from the date of the publication of said notice referred to, and up to the date of the commencement of this suit, neither the Northern Pacific Railroad Company, nor the complainants nor any other party or person, made or filed any claim to any of the lands here in controversy with the Register and Receiver at Duluth, Minn., or in the General Land Office at Washington, D. C., adverse to the claim of the locator of such particular description, but that the entry man without opposition or objection from said Northern Pacific Railroad Company, or its grantees, was allowed to enter said land, and established his claim thereto, and pay the amount for the same required by the government and to sell and dispose of said claim at its full value to bona fide purchasers thereof. That said locators were each actual and bona fide settlers over the age of 21 years and citizens of the United States, each thus and otherwise having all the qualifications required by the lands laws of the United States to obtain patents from the United States for said several descriptions of land by them located.

69 That the answering defendant herein as grantee of the original locators of said lands, either by deed or contract, was and is a bona fide purchaser for value of such lands or interest therein, and had no notice or knowledge of any right or claim of the Northern Pacific Railroad Company therein. That said lands are all outside of the place limits of the grant to the Northern Pacific Railroad Company, but whether the lands in controversy are within the first or second indemnity limits said defendant does not know and cannot say either on its belief or otherwise and leave the said plaintiffs to their proof. That on the 17th day of April, 1897, by order of the Secretary of the Interior, there was endorsed upon each separate list of the selection of lands mentioned in said complaint, as filed in the Duluth Local U. S. Land Office, the following words: "cancelling the within list to the extent of the tracts of, and outside, the terminal limits of the grant to the Northern Pacific Railroad Company" and defendant avers that each and every description of land in which defendant is interested in this controversy is situated outside of and east of the terminal limits of the grant to the Norhern Pacific Railroad Company as esablished by the Secretary as above referred to or under the Act of Congress, July 2, 1864, or Joint Resolution of May 31, 1870.

And thus defendant further answering says that the grant to the Northern Pacific Railroad Company has not as yet been adjusted by the Secretary of the Interior, that defendant is informed and believes the fact to be that [—] the adjustment of said grant there will be found to be no deficiency in said grant, but there will remain a large quantity of land now withheld from entry that will be restored to the public domain. That there are now and were at the time of the commencement of this action many thousands of acres of vacant public lands in the odd sections within the first and second indemnity limits of the Northern Pacific Railroad Company which could be used for indemnity for lands lost within the place limits of said grant.

70 11th. This defendant further answering says it is informed and believe it to be true that the Secretary of the Interior having refused to in any manner recognize the claimed rights of the Northern Pacific Railroad Company in and to the lands in controversy and other lands in Minnesota and conflicting claims having arisen as to these and other lands within the grant of said company.

The said railroad Company caused to be introduced in the Congress of the United States, a bill having particular reference to the lands in controversy, and all other lands of like character, entitled: "An Act entitled an Act to facilitate the adjustment by the land department of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company" and urged the Secretary of the Interior to consent to the passage of said bill, and that after certain modifications had been made in the original bill, as first presented, the same became a law with the approval of the President of the United States on the 1st day of July, 1898.

That by the terms of said Act among other things it is provided "That where prior to January first, 1898, the whole or any part of an odd numbered section, in either the granted or the indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of the grantee or its lawful successor is claimed to have attached by definite location or selection, has been purchased directly from the United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department, and where purchaser, settler, or claimant refuses to transfer his entry as hereinafter provided, the railroad grantee or its successor in interest, upon a proper relinquishment thereof, shall be entitled to select in lieu of the land relinquished an equal quantity of public lands, surveyed or unsurveyed not mineral or reserved and valuable for stone, iron or coal and free from valid adverse claim or not occupied
71 by settlers at the time of such selection, situated within any State or Territory into which said railroad grant extends and patents shall issue for the lands so selected as though it had been originally granted: Provided, however, that the Secretary of the Interior shall from time to time ascertain and as soon as conveniently may be done, [caused] to be prepared and delivered to the said railroad grantees or its successors in interest a list or lists of the several tracts which have been purchased or settled upon or occupied as aforesaid, and are now claimed by said purchasers or occupants, its heirs [of] assigns, according to the smallest Government subdivisions and all right, title and interest of the said railroad grantee or of its successors in interest in and to any of such tracts, which the said railroad grantee or its successor in interest may relinquish hereunder shall revert to the United States and such tracts shall be treated, under the laws thereof, in the same manner as if no right thereto had ever vested in said railroad grantee and all qualified persons who have occupied and may be on said lands as herein provided, or who have purchased said lands in good faith as aforesaid, its heirs and assigns shall be permitted to prove their title to said lands according to law, as if said grant had never been made, and upon such relinquishment said Northern Pacific Railroad Company or its lawful successors in interest may proceed to select, in the manner

hereinbefore provided, lands in lieu of those relinquished, and patents shall issue therefor:

Provided further, That the railroad grantee or its successor in interest shall accept said list or lists so to be made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it, but it shall not be bound to relinquish lands sold or contracted by it or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron or coal."

72 And this defendant further answers and says that the Northern Pacific Railroad Company and its successors in interest the Northern Pacific Railway Company have ever since the passage and approval of said Act of July 1st, 1898, been acting and operating under said Act, that said companies have made numerous relinquishments thereunder and have taken lieu lands in place of the lands so relinquished by them under the terms and provisions of said Act; that the said Northern Pacific Railroad Company and its successors in interest the Northern Pacific Railway Company have in all things accepted and adopted the terms and conditions of the said Act of July 1st, 1898, and are now and were long prior to the time complainants claim to have purchased the lands in controversy, accepting and exercising the rights and privileges conferred upon them thereby. And this defendant further answering say that the complainants John A. Humbird and Frederick Weyerhauser took, accepted and received from the said Northern Pacific Railway Company the deed of conveyance set forth and described in their bill of complaint, with full knowledge and notice of the fact that the said Northern Pacific Railroad Company had aided in securing the passage of said Act of July 1st, 1898, and that it and its successor in interest, had thereafter accepted, adopted and ratified the same and had in all ways availed themselves of the benefits conferred thereby. And this defendant further answering says that there was issued from the General Land Office at Washington, D. C., a circular containing "Regulations under the Act of July 1, 1898, (30 Stat. 597, 620), to facilitate the adjustment by the Land Department of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company. which circular was duly approved by the Secretary of the Interior, February 14th, 1899, and that said circular contains the land departments construction of said Act of July 1st, 1898, and provides the method, practice and procedure to be followed under said Act, that the said Northern Pacific Railroad Company and its successors in interest the
73 Northern Pacific Railway Company accepted the construction placed upon said act by the land department

and consented thereto and to all the rules and regulations contained in said circular and have under such rules and regulations secured lieu lands for those relinquished under the Act of July 1st, 1898. Sec. 9 of said circular is as follows, to wit·

"The railroad claim is one which arises from the definite location of the line of railroad if the land is within the primary limits of the grant, or which arises from a lieu selection if the land is within the indemnity limits, and is one which, in the absence of all individual claims, would enable the railroad claimant to obtain full title to the land."

Sec. 10 provides that, "The purpose of the act is to avoid further strife and contention before the Land Department between the railroad claimant upon the one hand, and individual claimants upon the other hand, and to that end the Act extends alternately to the individual claimant and the railroad claimant an opportunity to acquire other lands of equal area in lieu of those [—] contest. The privilege of making a lieu selection is not dependant upon success or failure in the contest, but rather upon the existence of a contest or controversy which is intended to be disposed of without subjecting the parties to the delay, expense and inconvenience incident to the further prosecution."

Sec. 17 of said circular is as follows: "The option of relinquishing the lands in contest (controversy) and selecting other lands in lieu thereof, is by law first extended to the individual claimant, and if he elects to hold the lands which are in contest (controversy) the railroad claimant will be called upon to relinquish the same and to select other lands in lieu thereof."

That after the issuance of said circular and at the request of the Northern Pacific Railroad Company and to the end that the benefits intended to be extended by said act might be still secured to those entitled thereto, and to avoid possible
and unnecessary litigation in the Court as a result of the
74 inadvertent or erroneous issuance of patents since July
1, 1898, in such cases the following regulations were
added to those adopted February 14, 1899, under said act, namely, "Where any portion of an odd numbered section within the limits of the grant to the Northern Pacific Railroad Company coming within the provisions of the act of July 1, 1898, as here construed, has been patented without following the provisions of that act, the individual claimant will, notwithstanding the issuance of such patent, be advised in the manner prescribed by paragraph 18, of the option accorded him by said act. If the patent was issued to him and he elects

to relinquish his claim he will be required to make reconveyance of the land to the United States in the manner prescribed by paragraph 24, 25 and 26; but if he elects to retain the land patented it will be listed according to paragraph 23, with a view to its relinquishment by the railroad company. If the patent was issued to the railroad company, and the individual claimant elects to retain the land so patented the company will be required to make reconveyance thereof to the United States according to paragraphs 24 and 26, whereupon the individual claimant may perfect title thereto and the railroad company may select other lands in lieu thereof as in other cases."

And this defendant alleges that the above provision of the rules and regulations heretofore issued by the Land Department, at Washington, was thus amended at the special instance and request of the Northern Pacific Railroad Company, and by so doing the Northern Pacific Railroad Company adopted this form and mode of adjusting its grant, and that all the land claimed by the defendant in this controversy, come within the provisions of the Act of Congress of July 1, 1898, and the rules and regulations of the Land Department governing the same, and the defendant says that if it should appear that the Northern Pacific Railroad Company had any right, title or interest in and to any of the lands claimed by this defendant in this controversy this defendant refuses to relinquish the same
and hereby give notice to complainants that it will re-
75 tain said land under the terms and provisions of said
Act of July 1st, 1898.

And this defendant further says that it believes it to be true that the said complainants are not bona fide purchasers of the land described in Exhibit "A" attached to said complaint; that this defendant believes that the paper writing of the 19th day of January, 1899, purporting to be a warranty deed from the Northern Pacific Railway Company to the complainants was given to the complainants without consideration, under a secret understanding and agreement that the plaintiffs would not be required to pay the consideration agreed upon if the plaintiffs' title should fail; that this action is a speculative one on the part of the plaintiffs and entered into with full knowledge of all the facts above recited, and the rights of the defendant in said lands.

12th. And this defendant further answering says it denies that all or any of the lands in which this defendant is interested and described in Exhibit "A" of complainants' Complaint were wrongfully and unlawfully permitted by the proper officers of the Land Department of the United States to be entered under various land laws of the United States and final certificates of such entries were issued to the several persons entering the same; and this defendant avers and charge the truth to be that all the entries made of lands in which this defendant is interested were rightfully and lawfully accepted and received by said Land Department before January 1, 1898, and that all things done in and about said entries was in compliance with law and the rules and regulations of said Department.

13th. And this defendant further answering says it admits that it is claiming all the rights of ownership either legal or equitable with which they purport to have been invested by the several instruments, conveyances or contracts shown by Exhibit "A" of the Complaint.

14th. And this defendant further answering says it denies it had any notice or knowledge of the claimed rights of 76 the Northern Pacific Railroad Company or its assigns in and to the lands in controversy and deny that it had any notice or knowledge of the facts alleged in the Bill of Complaint with reference to the grant of lands to said Northern Pacific Railroad Company or the location and construction of its line or lines of railroad as stated in the Complaint or of its selections of lands as therein stated or otherwise.

This defendant therefore prays that it may be determined, adjudged and decreed that these complainants have no right, title or interest in and to any of the lands in controversy in which this defendant is interested and for such other and further relief as in equity may seem just and proper to this honorable court and for their reasonable costs and charges allowed in this behalf.

JAQUES & HUDSON,
Attorneys for Defendants named in answer.
700-701 Torrey Building, Duluth, Minn.

State of Minnesota,
County of St. Louis—ss.

F. R. Webber, being first duly sworn, deposes and says; that he is the President of the Franklin Lumber Company, which is one of the defendants in the above entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those allegations therein stated on information and belief, and as to those he believes it to be true.

....

Subscribed and sworn to before this 3rd day of August, 1900.

....
Notary Public, St. Louis Co., Minn.

EXHIBIT A.

Department of the Interior,
General Land Office,
77 Washington, D. C., July 17, 1897.
Register and Receiver,
Duluth, Minn.

Sirs:—On August 27, 1896, the Secretary of the Interior rendered a decision wherein he held that the initial point on Lake Superior or the eastern terminus of the grant to the Northern Pacific Railroad Company was at Duluth, Minnesota, and on December 24, 1896, he approved a diagram prepared by this office showing the eastern terminal of the grant.

On January 23, 1897, a copy of so much of said diagram as related to, or affected lands within your district, was transmitted to you for the use and guidance of your office.

The decision of the Secretary aforesaid had the effect of restoring to the public domain all lands lying east of said terminal which had heretofore been withdrawn on account of the grant to railroad company. Therefore, to the end that all persons interested may have an opportunity to present any claims they may have to any of these lands, you will cause to be published for the period of thirty days in some newspaper of general circulation in their vicinity, a notice referring to said Secretary's decision which in effect declared that all lands previously withdrawn on account of the grant to the Northern Pacific Railroad Company and lying east of the terminal established at Duluth, are restored to the public domain and are subject to disposal at your office. It should be specifically stated in said notice that all persons claiming rights under the provisions of the Act of March 3, 1887, (24 Stat. 556) through purchase from the railroad company, should come forward and assert their claims at the earliest possible date in order to avoid conflicts which will necessarily arise through entries made under the general land laws, your office having no information as to the tracts likely to be claimed under said act.

The receiver, as disbursing officer, will pay the cost of the publication and forward a copy of the notice, with proof
78 of publication as his voucher for the disbursement.

Approved. BINGER HERMANN,
C. N. BLISS, Commissioner.
Secretary of the Interior.

Indorsed: Filed August 4th, 1900. Henry D. Lang, Clerk, By Margaret McKay, Deputy.

That on the 6th day of August A. D. 1900, there was filed with said Clerk a Stipulation that the Answer of Defendants Waldo A. Avery et al. and the Replication thereto shall stand

and be considered as the Answer to Defendants The Olean Lumber Company and the Alger, Smith & Company, and the Replication thereto; which said Stipulation is in words and figures, as follows, to wit:

Circuit Court of the United States, for the District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhauser, Compainants,
vs. In Equity.
Waldo A. Avery, George B. Morley et al., Defendants.

It is hereby stipulated by and between the complainants in the above entitled action, and the defendants, the Olean Land Company and the Alger, Smith Company, that the answer of the defendants Waldo A. Avery, George B. Morley et al., shall stand and be considered as the answer of the said defendants the Olean Land Company and the Alger, Smith & Company.

It is further stipulated that the replication of the complainants to the answer of the said Waldo A. Avery et al. shall stand and be considered as the replication to the answer of the said defendants the Olean Land Company and the Alger, Smith & Company.

Dated August 3, 1900.

BILLSON, CONGDON & DICKINSON &
H. OLDENBERG,
Solicitor for Complainants.
TOWNE & HARRIS,
79 Solicitors for Olean Land Co. and
Alger, Smith Company.

Indorsed: Filed August 6th, 1900. Henry D. Lang, Clerk. By Margaret McKay, Deputy.

That further on the same day, to wit, on the 6th day of August, A. D. 1900, there was filed with said Clerk the Replication to the Answer of Waldo A. Avery et al. in said cause; which said Replication is, in words and figures, as follows, to wit:

United States Circuit Court District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants,
vs. In Equity.
Waldo A. Avery, George B. Morley, Olean Land Company, et al., Defendants.

The Replication of the above named complainants to the answer of the defendants Waldo A. Avery, George B. Morley, Ezra Richardson, William C. McClure, Charles McIlhargey,

LeRoy Brooks, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bolen, Elizabeth Peterson, Angie C. Thomas, Edward J. Heath, Daniel Maher, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Wallie A. Avery, Trustee, Otto Carlson, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Arthur G. Mitchell, LeRoy Brooks, W. C. McClure as copartners doing business under the firm name of Mitchell & McClure, S. J. Cusson and Isaac Henry.

These replicants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendants, for replication thereunto saith that they do and will ever maintain and prove their said bill to be true, certain and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive and insufficient in the
60 law to be replied unto by these replicants; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these replicants are ready to aver, maintain and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

BILLSON, CONGDON & DICKINSON &
H. OLDENBURG,
Solicitors for Complainants, 301 Lonsdale Bldg.,
Duluth, Minn.

Indorsed: Filed August 6th, 1900. Henry D. Lang, Clerk.
By Margaret McKay, Deputy.

61 That on the 30th day of August, A. D. 1900, there was filed with the Clerk of said Court the Answer of Defendant Lesure Lumber Company in said cause; which said Answer is, in words and figures, as follows, to wit:

Circuit Court of the United States, District of Minnesota, Fifth Division.

To the Honorable, the Judges of the Circuit Court of the United States for the District of Minnesota, sitting in Equity:

John A. Humbird and Frederick Weyerhaeuser, Complainants,
vs. In Equity.
Wallie A. Avery, George H. Morley, Olcott Land Company, a corporation organized and doing business under the laws of the State of Minnesota, Joseph L. Fleurie, John J. Rupp, Fred P. Brewer, W. C. McClure, Ross Richardson, Charles McElhargey, LeRoy Brooks, John R. Scott, C. N. Hill Lumber Company, a corporation organized

and doing business under the laws of West Virginia, [illegible] Company, a corporation organized and doing business under the laws of the State of Michigan, [illegible] Company, a corporation organized and doing business under the laws of the State of Minnesota, [illegible] Lumber Company, [illegible] Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, [illegible] Company, a corporation organized and doing business under the laws of the State of Minnesota, [illegible] Company, a corporation organized and doing business under the laws of the State of Minnesota, [illegible] as copartners doing business under the firm name of [illegible], Defendants.

The separate answer of the defendant, [illegible] Lumber Company to the bill of complaint of [illegible], complainants:

This defendant, now and at all times hereafter reserving to itself all manner of benefit or advantage of exceptions or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, saith:

I.

Alleges that at the time it acquired its title to the lands hereinafter particularly described, and which it [illegible] in Exhibit "[illegible]", attached to complainants' bill of complaint, it was and ever since has been and now is a corporation organized and existing under the laws of the State of [illegible], and doing business at the City of Duluth, Minnesota.

II.

This defendant admits the facts as stated in the first, second, third and fourth paragraphs of said bill of complaint.

III.

This defendant for further answer says that it does not know and cannot set forth as to its belief or otherwise, and therefore leaves the complainants to their proof, as to whether the Northern Pacific Railroad Company definitely located the whole of its line of railroad extending from a point on Lake Superior in the State of Wisconsin westwardly to a point on Puget Sound, and thereafter duly constructed and completed its said railroad and telegraph line upon said line of definite location, in all respects as required by the provision of said Act of Congress approved July 2, 1894, as stated in said bill of complaint.

IV.

This defendant for further answer says that it does not know and cannot set forth as to its belief or otherwise, and therefore leaves the complainants to their proof, as to whether the lands situated in the State of Minnesota, opposite to and coterminus with and more than twenty but less than 83 forty miles distant from said line of definite location of that portion of said Northern Pacific Railroad extending from Thomson Junction to Ashland, as filed on the 6th day of July, 1882, were all the lands described in the Schedule which is annexed to said bill of complaint and marked Exhibit "A".

This defendant, further answering, denies that between the 16th day of October, 1883, and the 10th day of November of said year, or at any other time before or after said dates, the Northern Pacific Railroad Company made selection of any of the lands thus described in the Exhibit "A" attached to said bill of complaint, or that said selections were made by said company in compliance with instructions of the Secretary of the Interior and under his direction, or that the said Northern Pacific Railroad Company ever filed in the United States District Land Office at Duluth, Minn., or in any other place any valid list of selections of any lands in accordance with the provisions of said Act of Congress, approved July 2, 1864, and the Joint Resolution of May 31, 1870, or that all or any part of the lands thus described in Schedule "A", attached to complainants' bill of complaint, were thus selected as indemnity in lieu of other lands excepted from its said grant, and this defendant denies that at the date of filing of the lists as stated in said bill there was any deficiency within the place limits of said grant that would require lands to be selected within the indemnity limits as aforesaid.

This defendant further says that it does not know and cannot set forth as to its belief or otherwise, and therefore leaves the complainants to their proof, as to whether the Northern Pacific Railroad Company at the date of the filing of the lists mentioned in the bill of complaint paid the fees required in such cases, or whether the local officers certified to such lists or accepted or approved of the same, or whether the said lands described in said Exhibit "A" attached to the bill of complaint in this case were at the dates mentioned public
84 lands to which the United States had full title, not reserved, sold granted or otherwise appropriated, or free from pre-emption or other claims or right, but this defendant denies that at the date of filing the lists mentioned, or at any other time, the Northern Pacific Railroad Company had any rights whatever in any of the lands referred to in said Exhibit "A".

This defendant, further answering, says that it does not know and cannot set forth as to its belief or otherwise, and therefore leaves the complainants to their proof, as to whether the Northern Pacific Railroad Company, for the purpose of complying with certain other instructions of the Secretary of the Interior, did on the dates mentioned in said complaint file in the United States District Land Office at Duluth certain rearranged lists in the manner refered to in said bill of complaint or otherwise, but defendant denies that the lands in which it is interested, to wit: the Northeast quarter (N. E. ¼) and the South half of the Northwest quarter (S. ½ of N. W. ¼) of Section fifteen (15), in Township fifty-two (52) North, Range thriteen (13) West, St. Louis County, Minnesota, the same being a portion of the lands described in said Exhibit "A", attached to said bill of complaint, were selected by said railroad company in lieu of tracts of corresponding size situated within the primary or place limits of the original grant to said railroad company within the State of Minnesota that had been lost to the said railroad company by reason of their having been granted, sold, reserved, occupied, pre-empted or otherwise disposed of prior to the time when that part of the line of said road lying opposite to the same had been finally fixed and located, or that the said Northern Pacific Railroad Company had become entitled to receive indemnity therefor.

This defendant, further answering, says that it does not know and cannot set forth as to its belief or otherwise, and therefore leaves complainants to their proof as to
85 whether at the final location of said road west of Thom-

son Junction, or the final location of the line of road extending eastward from said Thomson Junction to Ashland, there was any deficiency in the place limits of said grant within the State of Minnesota that would or did authorize said railroad company to select land in lieu of land lost within the place limits of said grant in either the first or second indemnity limits of said road, or that said selection was for the purpose of making good the deficiency so existing on account of said line of railroad in the State of Minnesota.

This defendant, further answering, admits that no action has ever been taken by the Commissioner of the General Land Office or the Secretary of the Interior upon said lists, or upon the selections in Exhibit "A" aforesaid, except as hereinafter stated.

V.

This defendant, further answering, denies that the Northern Pacific Railroad Company ever became the owner or entitled to the possession of the lands of this defendant, particularly described in the fourth paragraph of this answer, the same being a portion of the lands described in Exhibit "A" attached to said bill of complaint, and this defendant says that it does not know and has no information whether said company did in the year 1898, or at any other time, convey all its rights, interest or ownership in the lands thus described to the Northern Pacific Railway Company, or whether the Northern Pacific Railroad Company under its charter was authorized to purchase the same, or whether on the 19th day of January, 1900, or at any other time, the said Northern Pacific Railway Company for a valuable consideration duly sold and conveyed by warranty deed to the complainants said lands.

And this defendant, further answering, says that it does not know and cannot set forth as to its belief or otherwise, and therefore leaves the complainants to their proof, as to whether at the time of the alleged execution and delivery of the said deed to said complainants by the Northern Pacific Railway Company the Honorable Secretary of the Interior 86 of the United States had or had not caused to be prepared or delivered to either of said railroad companies or to anyone a list or lists of any of the tracts of land which had been purchased or settled upon or occupied, opposite to or along any portion of the line of road of said Northern Pacific Railroad Company east of Thomson Junction aforesaid, as provided by the Act of Congress mentioned in said complaint.

VI.

This defendant, further answering, says that it does not know and cannot set forth as to its belief or otherwise, and therefore leaves the complainants to their proof, as to whether or not at the respective dates of the definite location of the various portions of the main and branch lines of said railroad, as set forth in complainants' bill of complaint, there were 10,624,745.27 acres, or any other number of acres, of land lost from the primary limits of said railroad grant to said Company by reason of the exceptions contained in the Act of Congress of July 2, 1864, as alleged in the bill of complaint, or otherwise.

And this defendant says that it does not know and has no information or belief whether within the indemnity limits prescribed in said Act of Congress approved July 2, 1864, at the respective dates of the definite location of said road, there were not more than 7,177,768.71 acres of land subject to selection under the terms of said act as indemnity for lands excepted from said grant; and this defendant further says that it does not know and cannot set forth as to its belief or otherwise as to how much land there was at the time of the definite location of said road within the indemnity limits prescribed in said Act of Congress of July 2, 1864, subject to selection under the terms of said Act as indemnity for lands excepted from said grant, and this defendant therefore leaves complainants to their proof as to the number of acres of land lost by said railroad company from said grant at the respective dates of the definite location of said road, by reason of
the exceptions contained in said Act of Congress, and
87 as to the number of acres subject to selection by said
company as indemnity for land excepted from said
grant under said Act of Congress approved July 2, 1864.

This defendant, further answering, says that it does not know and cannot set forth as to its belief or otherwise whether, of the 10,624,746.27 acres of land alleged to have been lost to and excepted from said grant, not more than 2,887,076.57 acres lost to and excepted from said grant subsequent to the passage and approval of said Act of July 2, 1864, or as to whether or not said 2,887,076.57 acres of said 10,624,746.27 acres so alleged to be lost as aforesaid was the only portion thereof which could or can be satisfied under the provisions of the Joint Resolution of Congress approved May 31, 1870, and defendant therefore leaves the complainants to their proof thereon.

And this defendant says that it does not know and has no information as to whether the total area of lands in the indemnity limits of said grant to said railroad company subject to selection as indemnity at the respective dates of the definite location of the various portions of the line of said railroad lacked more than 550,000, or any other number of acres whatever of being sufficient to satisfy the losses of said grant, and defendant therefore leaves complainants to their proof thereon.

This defendant denies that by virtue of the premises and upon the definite location of the line of said railroad, as stated in paragraph ten (10) of complainants' Bill of complaint or otherwise, the said Northern Pacific Railroad Company became the owner in fee of all the lands described in Exhibit "A" attached to the bill of complaint, and denies that the said Northern Pacific Railroad Company ever became the owner of the lands or timber of this defendant, hereinbefore particularly described.

VII.

This defendant, further answering, denies that the said lands in which this defendant is interested, and which are among the lands described in Exhibit "A" attached to
88 the bill of complaint were wrongfully and unlawfully
by the proper officers, of the land department permitted to be entered under various land laws of the United States, but alleges that at the several dates of the entry of the lands in which this defendant is interested, and which are situated in the North half (N. ½) of said Section fifteen (15), said lands were public lands, subject to be entered under the land laws of the United States, and at the time of such entry the Northern Pacific Railroad Company or its assigns had no right, title, claim or interest in said lands; and this defendant denies that the Northern Pacific Railroad Company or its grantees have any vested rights in any of said parcels of land or any rights whatever, or that all or any of the proceedings connected with all or any of the entries and locations mentioned in Exhibit "A" were without notice to or knowledge of said Northren Pacific Railroad Company or any one claiming under it, or without any opportunity for said company or its assigns to be heard in opposition thereto, but on the contrary this defendant alleges that the Northern Pacific Railroad Company and its grantees had full knowledge and notice of every step that was taken in each and every case of the acquiring of title to these lands by the locators thereof.

And this defendant, further answering, says that at the dates of the entry of the several tracts of land in which it is interested, such tracts and each and all of them were vacant public lands, subject to entry under the land laws of the

United States; that the pretended list of selections mentioned in complainants' bill of complaint as made by the Northern Pacific Railroad Company had never been recognized or approved by the Secretary of the Interior, as the law required; that by an order of said Secretary of the Interior of date August 27, 1896, said pretended lists of selections was cancelled and the lands restored to the public domain and made subject to entry and settlement, the same as other public lands
that the said Northern Pacific Railroad Company had
89 knowledge of this fact, and that the lands had been restored to the public domain, and that the Secretary of the Interior intended to and did allow parties to enter said land in the same manner that other public lands were entered; that parties made application under the several land laws of the United States to purchase said lands and advertised, as the law requires, that at a date certain, mentioned in said notice, the applicant would make proof before the local officers of the land office of his or her right to purchase the same, and all persons having adverse interest in such tract of land were notified to appear and show cause if any existed why the applicant should not be allowed to purchase said land, and that at the time named in said notice the said company did not appear, nor has it or its assigns ever made any appearance or objection to the purchase thereof.

VIII.

This defendant further says that on the 13th day of November, 1895, the Secretary of the Interior, by a decision of that date, established the eastern terminus of the Northern Pacific Railroad Company for the adjustment of its land grant at some point not farther east than Superior, Wisconsin; that on August 27, 1896, the Secretary of the Interior fixed the eastern terminus of the land grant to said company at Duluth, and at the same time restored to the public domain and subject to entry all lands lying east of the line then established by said decision; that on January 23, 1897, the Secretary of the Interior caused to be prepared a diagram showing the line thus established, a copy of which was transmitted to the Register and Receiver of the Duluth Land District, in which the lands in controversy are situated; that on the 17th day of July, 1897, the Commissioner of the United States General Land Office prepared a notice directed to said Register and Receiver, and said notice was approved by the Secretary of the Interior and sent by said Commissioner to the Register and Receiver of the United States local Land Office at Duluth, Minn., in which notice was stated that the decision of the Secretary
90 aforesaid had the effect to restore to the public domain all lands lying east of said terminal, and directed the

said Register and Receiver of the said local land office to give public notice of the same by publishing a notice referring to said Secretary's decision, which in effect declared that all lands previously withdrawn on account of the grant to the Northern Pacific Railroad Company and lying east of the terminal established at Duluth were restored to the public domain and were subject to disposal at the local United States Land Office at Duluth; that said notice was directed to be published for a period of thirty days, to the end that all persons interested might have opportunity to present any claims they might have to any of the lands thus affected by said decisions; that the said Northern Pacific Railroad Company had full and complete notice and knowledge of the contents of said notice and the publication thereof; that a copy of said notice is hereunto attached, made part of this answer, and marked Exhibit "A"; that said notice was by said Register and Receiver duly published as directed, and, after the expiration of the period of thirty days, and after the restoration of these lands to the public domain, the lands in which this said defendant is interested were under the land laws of the United States duly and legally entered, and each and every location was previous to January 1, 1898, and after such location such proceedings were taken by said locator that a certificate was duly issued in the usual form to said locator for said lands; that, from the date of the publication of said notice referred to, and up to the date of the commencement of this suit, neither the Northern Pacific Railroad Company nor the complainants, nor any other party or person, made or filed any claim to any of the lands here in controversy with the Register and Receiver at Duluth, Minn., or in the General Land Office at Washington, D. C., adverse to the claim of the locators of such particular description, but that the entryman, without opposition or objection from said Northern Pacific Railroad Company or its grantees, was allowed to enter said lands and establish his claim thereto and pay the amount for the
91 same required by the Government, and to sell and dispose of said claim at its full value to bona fide purchasers thereof; that said locators were each actual and bona fide settlers over the age of twenty-one years and citizens of the United States, each thus and otherwise having all the qualifications required by the land laws of the United States to obtain patents from the United States for said several descriptions of land by them located.

That the answering defendant herein as grantee of the original locators of said lands by deed, was and is a bona fide purchaser for value of such lands or interest therein, and had no notice or knowledge of any right or claim of the Northern

Pacific Railroad Company therein; that at the time its said deeds were executed and delivered to it it paid a valuable and adequate consideration therefor and purchased the same in good faith, without any knowledge or notice of any adverse claim or pretended claim by or on the part of the Northern Pacific Railroad Company against the lands hereinbefore particularly described, or any part thereof, and without any knowledge or notice of any adverse claim or pretended claim by any other person or persons, corporation or corporations, against the same or any part thereof; that this defendant purchased said lands hereinbefore particularly described in reliance upon the records in the office of the Register of Deeds in and for said County of St. Louis, and in the local United States Land Office at Duluth, Minnesota, and then and now believing that its said respective grantors owned the equitable title to the respective parcels of land and interest therein which they conveyed to this defendant; of all of which the said complainants and the said Northern Pacific Railroad Company had notice.

That said lands in which this defendant is interested are all outside of the place and first and second indemnity limits of the grant to said Northern Pacific Railroad Company.

92 That on the 17th day of April, 1897, by order of the Secretary of the Interior, there was endorsed upon each separate list of the selection of lands mentioned in said bill of complaint, as filed in the Duluth local United States Land Office, the following words, "cancelling the within list to the extent of the tracts of and outside the terminal limits of the grant to the Northern Pacific Railroad Company," and this defendant avers that each and every description of land in which defendant is interested in this controversy is situated outside of the limits of the grant to the Northern Pacific Railroad Company, as established by the Secretary as above referred to or under the Act of Congress of July 2, 1864, or Joint Resolution of May 31, 1871.

And this defendant further answering, says that the grant to the Northern Pacific Railroad Company has not as yet been adjusted by the Secretary of the Interior; that defendant is informed and believes the fact to be that on the adjustment of said grant there will be found to be no deficiency in said grant, but there will remain a large quantity of land now withheld from entry that will be restored to the public domain; that there are now and were at the time of the commencement of this action many thousands of acres of vacant public lands in the odd sections within the first and second indemnity limits of the Northern Pacific Railroad Company which could be used for indemnity for lands lost within the place limits of said grant.

IX.

This defendant, further answering, says that it is informed and believes it to be true that the Secretary of the Interior has refused to in any manner recognize the claimed rights of the Northern Pacific Railroad Company in and to the lands in controversy and other lands in Minnesota, and conflicting claims have arisen as to these and other lands within the grant of said company.

That said railroad company caused to be introduced in the Congress of the United States a bill having particular reference to the lands in controversy and all other lands of
93 like character, entitled, "An Act to facilitate the adjustment by the land department of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company," and urged the Secretary of the Interior to consent to the passage of said bill, and that after certain modifications had been made in the original bill, as first presented the same became a law with the approval of the President of the United States on the 1st day of July, 1898.

That by the terms of said Act, among others things, it is provided, "that where prior to January first, 1898, the whole or any part of an odd numbered section in either the granted or indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of the grantee or its lawful successor is claimed to have attached by definite location or selection, has been purchased directly from the United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department, and where purchaser, settler, or claimant refuses to transfer his entry as hereinafter provided, the railroad grantee or its successor in interest, upon a proper relinquishment thereof, shall be entitled to select in lieu of the land relinquished an equal quantity of public lands, surveyed or unsurveyed, not mineral or reserved and valuable for stone, iron or coal, and free from valid adverse claim or not occupied by settlers at the time of such selection, situated within any State or Territory into which said railroad grant extends, and patents shall issue for the land so selected as though it had been originally granted; . . . Provided, however, that the Secretary of the Interior shall from time to time ascertain and as soon as conveniently may be done cause to be prepared and delivered to said railroad grantees or its successors in interest a list or lists of the several tracts which have been purchased or settled upon or occupied as aforesaid, and are now claimed by said purchasers or occupants, their heirs or assigns, according to the smallest Government subdivisions; and all right, 94 title and interest of the said railroad grantee or of its successors in interest in and to any of such tracts, which the said railroad grantee or its successor in interest may relinquish hereunder shall revert to the United States, and such tracts shall be treated under the laws thereof in the same manner as if no right thereto had ever vested in said railroad grantee, and all qualified persons who have occupied and may be on said lands as herein provided, or who have purchased said lands in good faith as aforesaid, their heirs or assigns, shall be permitted to prove their titles to said lands according to law, as if said grant had never been made, and, upon such relinquishment said Northern Pacific Railroad Company or its lawful successors in interest may proceed to select in the manner hereinbefore provided lands in lieu of these relinquished, and patents shall issue therefor:

Provided, further, that the railroad grantee or its successor in interest shall accept said list or lists so to be made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it, but it shall not be bound to relinquish lands sold or contracted by it or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron or coal."

And this defendant further answers and says that the Northern Pacific Railroad Company and its successor in interest, the Northern Pacific Railway Company, have ever since the passage and approval of said act of July 1, 1898, been acting and operating under said Act; that said companies have made numerous relinquishments thereunder and have taken lieu lands in place of the lands so relinquished by them under the terms and provisions of said act; that the said Northern Pacific Railroad Company and its successor in interest, the Northern Pacific Railway Company, have in all things accepted and adopted the terms and conditions of the said Act of July 1, 1898, and are now and were long prior to the time complainants claim to have purchased the lands in controversy accepting and exercising the rights and privileges conferred 95 upon them thereby. And this defendant, further answering, says that the complainants, John A. Humbird and Frederick Weyerhauser, took, accepted and received from the said Northern Pacific Railway Company the deed of conveyance set forth and described in their bill of complaint with full knowledge and notice of the fact that the said Northern

Pacific Railroad Company had aided in securing any passage of said Act of July 1, 1898, and that it and its successor in interest had thereafter accepted, adopted and ratified the same and had in all ways availed themselves of the benefits conferred thereby. And this defendant, further answering, says that there was issued from the General Land Office at Washington, D. C., a circular containing "Regulations under the Act of July 1, 1898, (30 Stat., 597, 620), to facilitate the adjustment by the Land Department of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company," which circular was duly approved by the Secretary of the Interior, February 14, 1899, and that said circular contains the Land Department's construction of said Act of July 1, 1898, and provides the method, practice and procedure to be followed under said Act; that the said Northern Pacific Railroad Company and its successor in interest, the Northern Pacific Railway Company, accepted the construction placed upon said act by the Land Department and consented thereto and to all the rules and regulations contained in said circular, and have under such rules and regulations secured lieu lands for those relinquished under the Act of July 1, 1898.

That Section nine (9) of said circular is as follows, to wit:

"The railroad claim is one which arises from the definite location of the line of railroad if the land is within the primary limits of the grant, or which arises from a lieu selection if the land is within the indemnity limits, and is one which in the absence of all individual claims would enable the railroad claimant to obtain full title to the land."

96 Said Section ten (10) of said circular provides that, "The purpose of the Act is to avoid further strife and contention before the Land Department between the railroad claimant upon the one hand and the individual claimants upon the other hand, and to that end the Act extends alternately to the individual claimant and the railroad claimant an opportunity to acquire other lands of equal area in lieu of those in contest. The privilege of making a lieu selection is not dependent upon success or failure in the contest, but rather upon the existence of a contest or controversy which is intended to be disposed of without subjecting the parties to the delay, expense and inconvenience incident to the further prosecution."

That Section seventeen (17) of said circular is as follows: "The option of relinquishing the lands in contest (controversy) and selecting other lands in lieu thereof is by law first extended to the individual claimant, and, if he elects to hold the lands which are in contest (controversy) the railroad claimant will be called upon to relinquish the same and to select other lands in lieu thereof."

That after the issuance of said circular and at the request of the Northern Pacific Railroad Company and to the end that the benefits intended to be extended by said Act might be still secured to those entitled thereto, and to avoid possible and unnecessary litigation in the courts as a result of the inadvertent or erroneous issuance of patents since July 1, 1898, in such cases the following regulations were added to those adopted February 14, 1899, under said Act, namely: "Where any portion of an odd numbered section within the limits of the grant to the Northern Pacific Railroad Company coming within the provisions of the Act of July 1, 1898, as here construed, has been patented without following the provisions of that Act, the individual claimant will, notwithstanding the issuance of such patent, be advised in the manner prescribed by paragraph 18 of the option accorded him by said Act. If the patent was issued to him and he elects to relinquish his claim he 97 will be required to make reconveyance of the land to the United States in the manner prescribed by paragraph 24, 25 and 26; but, if he elects to retain the land patented, it will be listed according to paragraph 23, with a view to its relinquishment by the railroad company. If the patent was issued to the railroad company, and the individual claimant elects to retain the land so patented, the company will be required to make reconveyance thereof to the United States according to paragraphs 24 and 26, whereupon the individual claimant may perfect title thereto and the railroad company may select other lands in lieu thereof as in other cases."

And this defendant alleges that the above provision of the rules and regulations heretofore issued by the Land Department at Washington was thus amended at the special instance and request of the Northern Pacific Railroad Company, and by so doing the Northern Pacific Railroad Company adopted this form and mode of adjusting its grant, and that all the land claimed by the defendants in this controversy come within the provisions of the Act of Congress of July 1, 1898, and the rules and regulations of the Land Department governing the same, and this defendant says that if it should appear that the Northern Pacific Railroad Company had any right, title or interest in and to any of the lands claimed by this defendant in this controversy this defendant refuses to relinquish the same and hereby gives notice to complainants that it will retain said land under the terms and provisions of said Act of July 1, 1898.

And this defendant further says that it believes it to be true that the said complainants are not bona fide purchasers of the land described in Exhibit "A" attached to said bill of complaint; that this defendant believes that the paper writing of the 19th day of January, 1899, purporting to be a warranty deed from the Northern Pacific Railway Company to the complainants was given to the complainants [was given to the complainants] without consideration, under a secret understanding and agreement that the complainants would not be required to pay the consideration agreed upon if the complainants' title should fail; 98 that this action is a speculative one on the part of the complainants and entered into with full knowledge of all the facts above recited and of the rights of defendants in said lands.

X.

And this defendant, further answering, says that it denies that all or any of the lands in which this defendant is interested and described in Exhibit "A" attached to complainants' bill of complaint were wrongfully and unlawfully permitted by the proper officers of the Land Department of the United States to be entered under various land laws of the United States and final certificates of such entries issued to the several persons entering the same; and this defendant avers and charges the truth to be that all the entries made of lands in which this defendant is interested were rightfully and lawfully accepted and received by said Land Department before January 1, 1898, and that all things done in and about said entries were in compliance with law and with the rules and regulations of said Department.

XI.

And this defendant, further answering, says that it admits all the allegations of paragraph 12 of the bill of complaint, save only that it denies that the Northern Pacific Railroad Company or its grantees have or ever had any vested or other rights either in law or in equity in and to any of the lands described in Exhibit "A" attached to the bill of complaint and in which this defendant has or claims to have any interest, and denies that the proceedings connected with all or any of the entries and locations mentioned in said Exhibit "A" attached to the bill of complaint were had without notice to or knowledge of said Northern Pacific Railroad Company or any one claiming under it, or without any opportunity for said company or its assigns to be heard in opposition thereto.

XII.

And this defendant, further answering, says that it
99 admits that it is claiming all the rights of ownership
either legal or equitable with which it purports to have been invested by the several instruments, conveyances or contracts shown by Exhibit "A" attached to the bill of complaint.

XIII.

And this defendant, further answering, says that it denies that it had any notice or knowledge of the claimed rights of the Northern Pacific Railroad Company or its assigns in and to the land in controversy, and denies that it had any notice or knowledge of the facts alleged in the bill of complaint with reference to the grant of lands to said Northern Pacific Railroad Company or the location and construction of its line or lines of railroad as stated in the bill of complaint or of its selections of land as [as] therein stated or otherwise.

XIV.

And this defendant, further answering, says that it denies all or any of the said entries and locations of lands referred to in Exhibit "A" attached to the bill of complaint were allowed and the final certificates (and so far as issued the patents) issued under a mistake of law founded upon a certain erroneous ruling by the Secretary of the Interior to the effect that the said Northern Pacific Railroad Company and its successors in interest were not entitled to any lands by virtue of said Act of Congress approved July 2, 1864, and said Joint Resolution approved May 31, 1870, granting lands to said Northern Pacific Railroad Company east of that point on the line of said Northern Pacific Railroad where the same crosses the line of the St. Paul & Duluth Railroad known as Thomson Junction. And this defendant denies that the accuracy of such ruling, that is to say, the question at what point is the eastern terminus of the land grant of the said railroad company under the land grant of the said railroad company under the Act of Congress and joint Resolution aforesaid, is the only
question of law or fact at issue between complainants
100 and this defendant. And this defendant says that it is
informed and believes it to be true that the said Northern Pacific Railroad Company, exclusive of all the lands in controversy, has received many thousands of acres of land in excess of what said company was entitled to receive under said Act of Congress of July 2, 1864, and said Joint Resolution of May 31, 1870.

XV.

And this defendant, further answering, says that it admits the lands in controversy and in which it is interested are largely valuable for pine timber, but denies that it has cut or removed any timber therefrom, and denies that it has any intention of so doing until such time as the controversy concerning the title to said lands shall be finally determined by the courts.

And this defendant hereby accepts the tender of complainants made in their bill of complaint for answer of this defendant without oath, and avers that it has full, true and direct answer made to all and singular the matters contained in said bill of complaint so far as it has any knowledge or information thereon.

This defendant therefore prays that it may be determined, adjudged and decreed that the complainants have no right, title or interest in and to any of the lands in controversy in which this defendant is interested, and for such other and further relief as in equity may seem just and proper to this Honorable Court, and for its reasonable costs and charges allowed in this behalf.

M. H. STANFORD,
Solicitor and of Counsel for Defendant, Lesure Lumber Company, 401-402 Exchange Building, Duluth, Minn.

101 F. 76. EXHIBIT "A".

Department of the Interior
General Land Office,
Washington, D. C. July 17, 1897.

Register and Receiver,
Duluth, Minn.

Sirs:—On August 27, 1896, the Secretary of the Interior rendered a decision wherein he held that the initial point on Lake Superior or the eastern terminus of the grant to the Northern Pacific Railroad Company was at Duluth, Minnesota, and on December 24, 1896, he approved a diagram prepared by this office showing the eastern terminal of the grant.

On January 23, 1897, a copy of so much of said diagram as related to or affected lands within your district was transmitted to you for the use and guidance of your office.

The decision of the Secretary aforesaid had the effect of restoring to the public domain all lands lying east of said terminal which had heretofore been withdrawn on account of the grant to said railroad company. Therefore, to the end that all persons interested may have an opportunity to present any claims they may have to any of these lands, you will

cause to be published for the period of thirty days in some newspaper of general circulation in their vicinity a notice referring to said Secretary's decision, which in effect declared that all lands previously withdrawn on account of the grant to the Northern Pacific Railroad Company and lying east of the terminal established at Duluth are restored to the public domain and are subject to disposal at your office. It should be specifically stated in said notice that all persons claiming rights under the provisions of the Act of March 3, 1887, (24 Stat. 556), through purchase from the railroad company, should come forward and assert their claims at the earliest possible date in order to avoid conflicts which will nec-
102 essarily arise through entries made under the general land laws, your office having no information as to the tracts likely to be claimed under said Act.

The receiver, as disbursing officer, will pay the costs of the publication and forward a copy of the notice, with proof of publication, as his voucher for the disbursement.

Approved: BINGER HERMANN,
C. N. BLISS,
Secretary of the Interior. Commissioner.

Indorsed: Filed August 10th, 1900. Henry D. Lang, Clerk. By Margaret McKay, Deputy.

That on the 31st day of August, A. D. 1900, there was filed with said Clerk the Replications to the Answers of Defendants Franklin Lumber Company and Lesure Lumber Company in said cause; which said Replications are, in words and figures, as follows, to wit:

Circuit Court of the United States for the District of Minnesota,
Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants,
vs. In Equity.
Waldo A. Avery and George B. Morley et al., Defendants.

The replication of the above-named complainants to the answer of the defendant Franklin Lumber Company.

These replicants, saving and reserving to themselves all and all manner of advantage of exception which may be
103 had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant for replication thereunder sayeth that they do and will ever maintain and prove their bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive and in-

sufficient in the law to be replied unto by these replicants; without this, that any other matter or thing in said answer contained material or affectual in the law to be replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these replicants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

BILLSON, CONGDON &
DICKINSON & H. OLDENBERG,
Solicitors for Complainants,
511 Lonsdale Bldg., Duluth, Minn.

Indorsed: Filed August 31st, 1900. Henry D. Lang, Clerk, By Margaret McKay, Deputy.

Circuit Court of the United States for the District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants,
vs. In Equity.
Waldo A. Avery, George B. Morley et al., Defendants.

The replication of the above-named complainants to the answer of the defendant Lesure Lumber Company.

These replicants, saving and reserving to themselves all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendant for replication thereunder sayeth that they do and will ever maintain and prove their bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said de-
104 fendant is very uncertain, evasive and insufficient in
the law to be replied unto by these replicants; without this, that any other matter or thing in said answer contained material or effectual in law to be replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these replicants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

BILLSON, CONGDON &
DICKINSON, & H. OLDENBERG,
Solicitors for Complainants,
511 Lonsdale, Bldg., Duluth, Minn.

Indorsed: Filed August 31st, 1900. Henry D. Lang, Clerk, By Margaret McKay, Deputy.

That on the 12th day of September, A. D. 1900, there was filed with said Clerk a Stipulation permitting Defendant Michael Kelley to appear and answer in said cause; which said Stipulation is, in words and figures, as follows, to wit:

Circuit Court of the United States, for the District of Minnesota, Fifth Division.

To the Honorable, the Judges of the Circuit Court of the United States for the District of Minnesota, sitting in equity.

John A. Humbird and Frederick Weyerhauser, Complainants,
vs. In Equity.
Michael Kelley et al., Defendants.

Whereas, Michael Kelley, one of the above named defendants, has not appeared in said action nor answered the said bill of complaint filed in said cause, and whereas, it is the desire of the said Michael Kelley to appear in said cause by H. H. Hoyt as his solicitor, it is hereby stipulated by and between the solicitors for complainant and the said H. H. Hoyt, 105 that the appearance of the said Michael Kelley may be considered entered in the above cause, and that the answer of the said defendants Waldo A. Avery and others may stand as the answer of the said Michael Kelley in said cause; the same as if the said Michael Kelley had joined in said answer, and that the Replication of the Complainants to said answer may stand as the Replication to said answer of Michael Kelley.

Dated Aug. 25, 1900.

H. H. HOYT,
Solicitor for Defendant Michael Kelley, 310 Chamber of Commerce.

BILLSON, CONGDON &
DICKINSON & H. OLDENBERG,
Solicitors for Complainants.

Indorsed: Filed September 12th, 1900. Henry D. Lang, Clerk, By Margaret McKay, Deputy.

That on the 13th day of September, A. D. 1900, there was filed with said Clerk an Affidavit and Order for Appearance of non-resident Defendants in said cause; which said Affidavit, etc., together with the return of service thereof and attached thereto, are, in words and figures, as follows, to-wit:

Circuit Court of the United States, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants,
vs. In Equity.
Waldo A. Avery, George B. Morley, et al., Defendants.

On reading and filing the affidavit of William W. Billson, one of the solicitors for said complainants, duly filed under the provisions of Chapter 738 of the Revised Statutes of the

United States, and it duly appearing therefrom that this is a suit in equity to enforce a claim against real property
106 within the District of Minnesota, and that none of the three defendants B. C. Cooke, Edward B. Manwaring and Lucina A. Sylvester is an inhabitant of or found within the said District of Minnesota, and that none of said three defendants voluntarily appears in this case.

Now, on motion of Billson, Congdon & Dickinson and H. Oldenberg, solicitors for said complainants, it is ordered that said three absent defendants, B. C. Cooke, Edward B. Manwaring and Lucina A. Sylvester, each of whom appear by said affidavit to be residents of the State of Wisconsin, be and are directed and required to appear, plead, answer or demur to the complainants' bill on or before the first Monday of October, A. D. 1900, and that this order be served on each of said defendants if practicable wherever found.

Dated, Duluth, Minnesota, Aug. 31, 1900.

By the Court,

WM. LOCHREN, Judge.

Circuit Court of the United States, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants,
vs. In Equity.
Waldo A. Avery, George B. Morley, et al., Defendants.

State and District of Minnesota,
County of St. Louis—ss.

William W. Billson, being first duly sworn, deposes and says that he is one of the attorneys for the complainants in the above entitled cause; that this is a suit in equity to enforce a claim against real property within the State and District of Minnesota; that the subpoena to defendants issued in said cause was returnable on the first Monday of July, 1900; that the defendants B. C. Cooke and Edward B. Manwaring are citizens of the State of Wisconsin and residents of the City of Superior in said state; that the defendant Lucina
107 A. Sylvester is a resident of Deronda, Polk County, Wisconsin, and that none of the three defendants above named is an inhabitant of and found within said district of Minnesota and that the marshal of said District has duly returned upon the said subpoena that none of the three defendants above named can be found in his said district, and affiant further says that none of said three defendants has voluntarily appeared in said cause.

Further affiant saith not, save that he make this affidavit in supprt of a motion for an order directing such absent defendants to appear, plead, answer or demur to the complainants' bill, at a certain day therein to be designated.

WM. W. BILLSON.

Subscribed and sworn to before me this 29th day of August, 1900.

(Notarial Seal.) JAMES WANLESS, Notary Public.
St. Louis County, Minn.

State and District of Wisconsin,
County of Polk—ss.

F. S. Anderson, being duly sworn deposes and says that at Deronda, in the County of Polk and State of Wisconsin, on the 10th day of September, A. D. 1900, he served the annexed order to appear upon the defendant Lucina A. Sylvester, by then and there handing to and leaving with her personally a true copy thereof.

F. S. ANDERSEN.

Subscribed and sworn to before me this 11th day of September, A. D. 1900.

(Notarial Seal.) F. R. WINTER, Notary Public.
Polk County, Wisconsin.

State and District of Minnesota,
County of St. Louis—ss.

Lee W. Farmer being duly sworn deposes and says that on the 8th day of September, A. D. 1900, at Superior, in the County of Douglas, in the State of Wisconsin, he served the annexed order to appear upon the defendants therein named B. C. Cooke and Edward B. Manwaring by then and leaving with each of the said two defendants personally a true copy of the said order; and the persons so served are known to the affiant to be the identical persons so named as defend-
108 ants in said cause.

LEE W. FARMER.

Subscribed and sworn to before me this 8th day of September, 1900.

WM. W. BILLSON, Notary Public.
St. Louis County, Minn.

Indorsed: Filed Sept. 13th, 1900. Henry D. Lang, Clerk. By Margaret McKay, Deputy.

That on the 8th day of November, A. D. 1900, there was filed with said Clerk the joint and separate Answer of Defendants Justin and George K. Wentworth and the Replication thereto in said cause; which said Answer and Replication are in words and figures, as follows, to-wit:

Circuit Court of the United States, District of Minnesota, Fifth Division.

To the Honorable the Judges of the Circuit Court of the United States for the District of Minnesota, sitting in equity:

John A. Humbird and Frederick Weyerhauser, Complainants,
vs. In Equity.
Waldo A. Avery, George B. Morley, Justin Wentworth, George K. Wentworth et al., Defendants.

The joint and separate answer of the defendants Justin Wentworth and George K. Wentworth to the Bill of Complaint of John A. Humbird and Frederick Weyerhauser complainants:

These defendants now and at all times hereafter reserving to themselves all manner of benefit or advantage of exceptions or otherwise that can or may be had or taken to the many errors uncertainties and imperfections in the said Bill of Complaint contained for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

No. 359.

109 1. That these defendants admit the facts as stated in the First, Second, Third and Fourth Paragraphs of said Bill of Complaint.

II. These defendants for further answer say, that they do not know and cannot set forth as to their belief or otherwise, and therefore leave the complainants to their proof, as to whether the Northern Pacific Railroad Company definitely located the whole of its line of railroad, extending from a point on Lake Superior in the State of Wisconsin, westwardly to a point on Puget Sound, and thereafter duly constructed and completed its said railroad and telegraph line upon said line of definite location, in all respects as required by the provision of said Act of Congress approved July 2nd, 1894, as stated in said complaint.

III. And these defendants for further answer say that they do not know and cannot set forth as to their belief or otherwise and therefore leave the complainants to their proof, as to whether the lands situated in the State of Minnesota, opposite to and co-terminus with, and more than twenty but less than forty miles distant from said line of definite location of that portion of said Northern Pacific Railroad extending from

Thomson Junction to Ashland, as filed on the 6th day of July, 1882, were all the lands described in the schedule which is annexed to said bill of complaint and marked Exhibit "A."

And defendants further answering deny that between the 16th day of October, 1883, and the 10th day of November of said year, or at any other time before or after said dates, the Northern Pacific Railroad Company made selection of any of the lands thus described in the Exhibit "A" attached to said bill of complaint, or that said selections were made by said Company in compliance with instructions of the secretary of the Interior, and under his direction or that the said Northern Pacific Railroad Company ever filed in the United States District Land Office at Duluth, Minn., or in any other place
110 any valid list of selections of any lands in accordance
with the provisions of said Act of Congress, approved July 2, 1864, and the joint resolution of May 31, 1870, or that all, or any part of the lands thus described in Schedule "A" attached to complainants bill of complaint were thus selected as indemnity, in lieu of other lands excepted from its said grant and defendants deny that at the date of filing of the lists as stated in said bill, there was any deficiency within the place limits of said grant that would require lands to be selected within the indemnity limits as aforesaid.

Defendants further say that they do not know and cannot set forth as to their belief or otherwise and therefore leave the comlainants to their proof as to whether the Northern Pacific Railroad Company, at the date of the filing of the lists mentioned in the bill of complaint, paid the fees required in such cases, or whether the local officers certified to such lists or accepted or approved of the same or whether the said lands described in said Exhibit "A" attached to the complaint in this case were at the dates mentioned, public lands to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, or free from pre-emption or other claims or right, but defendants deny that at the date of filing the lists mentioned, or at any other time, the Northern Pacific Railroad Company had any rights whatever in any of the lands referred to in said Exhibit "A."

Defendants further answering say that they do not know and cannot set forth as to belief or otherwise and therefore leave complainants to their proof, as to whether the Northern Pacific Railroad Company for the purpose of complying with certain other instructions of the Secretary .of the Interior did, on the dates mentioned in said complaint, file in the United States District Land Office at Duluth, certain re-arranged lists in the manner referred to in said bill of complaint or other-

wise, but these defendants deny that the lands claimed
111 by them to wit: the north half of northwest quarter (N 1-2 of NW 1-4) of Section thirty-one (31) Township Fifty-four (54) North of Range Twelve (12) West, and Northeast quarter of Southeast quarter (NE 1-4 of SE 1-4) of Section Thirty-five (35) Township Fifty-five (55) North of Range Sixteen (16) West, St. Louis County, Minnesota, the same being a portion of the lands described in said Exhibit "A" attached to said complaint, were selected by said railroad company in lieu of tracts of corresponding size situated within the primary or place limits of the original grant to said railroad company within the State of Minnesota, that had been lost to the said railroad company by reason of having been granted, sold, reserved, occupied, preempted or otherwise disposed of, prior to the time when that part of the line of said road lying opposite to the same had been finally fixed, and located or that the said Northern Pacific Railroad Company had become entitled to receive indemnity therefor. Defendants further answering say that they do not know and cannot set forth as to their belief or otherwise and therefore leave complainants to their proof as to whether at the final location of said road west of Thomson Junction, or the final location of the line of road extending eastward from said Thomson Junction to Ashland, there was any deficiency in the place limits of said grant within the State of Minnesota that would or did authorize said railroad company to select land in lieu of land lost within the place limits of said grant in either the first or second indemnity limits of said road, or that said selection was for the purpose of making good the deficiency so existing on account of said line of railroad in the State of Minnesota.

Defendants further answering, admit that no action has ever been taken by the Commissioner of the General Land Office, or the Secretary of the Interior upon said lists or upon the selections in Exhibit "A" aforesaid except as hereinafter
112 stated.

IV. Defendants further answering deny that the Northern Pacific Railroad Company ever became the owner or entitled to the possession of any of the lands specifically described in the preceding paragraph of this answer, described in Exhibit "A" attached to said bill of complaint, and defendants say that they do not know and have no information whether said company did in the year 1898, or at any other time, convey all its rights, interest or ownership in the lands thus described to the Northern Pacific Railway Company, or whether the Northern Pacific Railroad Company under its charter was authorized to sell and convey said lands, or whether the Northern Pacific Railway Company was authorized to purchase the same, or whether on the 19th day of January, 1900, or at any other time the said Northern Pacific Railway Company for a valuable consideration duly sold and conveyed by warranty deed to the complainants said lands.

And defendants further answering say that they do not know and cannot set forth as to their belief or otherwise and therefore leave said complainants to their proof as to whether at the time of the alleged execution, and delivery of the said deed to said complainants by the Northern Pacific Railway Company the Honorable Secretary of the Interior of the United States had, or had not caused to be prepared, or delivered to either of said railroad companies, or to anyone a list or lists of any of the tracts of lands which had been purchased or settled upon, or occupied opposite to or along any portion of the line of road of said Northern Pacific Railroad Company east of Thomson Junction aforesaid, as provided by the Act of Congress mentioned in said complaint.

V. And these defendants further answering say they do not know and cannot set forth as to their belief or otherwise as to whether or not at the respective dates of the definite location of the various portions of the main and branch lines of said railroad as set forth in complainants Bill of Complaint, there were 10,624,745.27 acres or any other number of acres of land lost from the primary limits of said rail-
113 road grant to said company by reason of the exceptions contained in the Act of Congress of July 2nd, 1864, as alleged in the Bill of Complaint or otherwise.

And these defendants say they do not know and have no information or belief as to whether within the indemnity limits prescribed in said Act of Congress approved July 2nd, 1864, at the respective dates of definite location of said road, there were not more than 7,177,768.71 acres of land subject to selection under the terms of said Act of indemnity for lands excepted from said grant; and these defendants further say they do not know and cannot set forth as to their belief or otherwise as to how much land there was at the time of the definite location of said road, within the indemnity limits prescribed in said Act of Congress of July 2nd, 1864, subject to selection under the terms of said Act as indemnity for lands excepted from said grant and defendants therefore leave complainants to their proof as to the number of acres of land lost by said railroad company from said grant, at the respective dates of the definite location of said road, by reason of the exceptions contained in said Act of Congress, and as [—] the number of acres subject to selection by said company as indemnity for land excepted from said grant under said Act of Congress approved July 2nd, 1864.

These defendants further answering say they do not know and cannot set forth as to their belief or otherwise, whether of the 10,624,746.27 acres of land alleged to have been lost as aforesaid, from said grant, nor more than 2,887,076.57 acres were lost to and excepted from said grant subsequent to the passage and approval of said Act of July 2nd, 1864, or as to whether or not said 2.887,076.57 acres of said 10,624,746.27 acres so alleged to be lost as aforesaid, was the only portion thereof which could or can be satisfied under the provisions of the joint resolution of Congress approved May 31st, 1870, and defendants therefore leave complainants to their proof thereon.

[ants to their proof thereon.]

114 And these defendants say they do not know and have no information as to whether the total area of lands in the indemnity limits of said grant to said railroad company subject to selection as indemnity at the respective dates of the definite location of the various portions of the line of said railroad lacked more than 550,000 or any other number of acres whatever of being sufficient to satisfy the losses of said grant and defendants therefore leave complainants to their proof thereon.

These defendants deny that by virtue of the premises and upon the definite location of the line of said railroad as stated in paragraph 10 of complainants Bill of Complaint, or otherwise, the said Northern Pacific Railroad Company became the owner in fee of all the lands described in Exhibit "A" attached to the Bill of Complaint and deny that it ever became the owner of any of the lands hereinbefore specifically described.

VI. And defendants further answering deny that the said lands in which these defendants are interested and which are among the tracts described in Exhibit "A" attached to the complaint were wrongfully or unlawfuly by the proper officers of the land department permitted to be entered under various land laws of the United States, but allege that at the several dates of the entry the said several tracts entered were at the date of such entry respectively public lands, subject to be entered under the land laws of the United States and at the time of such entry the Northern Pacific Railway Company had no right, title, claim or interest in said lands; and defendants deny that the Northern Pacific Railroad Company, or its grantees, have any vested rights in any of said parcels of land, or any rights whatever, or that all or any of the proceedings connected with all or any of the entries and locations mentioned in Exhibit "A" were without notice to, or knowledge of, said Northern Pacific Railroad Company, or anyone claiming under it, or without any opportunity for said company, or its assigns to be heard in opposition thereto, 115 but on the contrary the defendants allege that the Northern Pacific Railway Company and its grantees had full knowledge, and notice of every step that was taken in each and every case of the acquiring title to these lands by the locators thereof.

And defendants further answering say that at the date of the entry of the several tracts of land in which they are interested, such tracts and each and all of them were vacant public lands subject to entry under the land laws of the United States that the pretended list of selections mentioned in complainants' Bill of Complaint as made by the Northern Pacific Railroad Company had never ben recognized, or approved by the Secretary of the Interior as the law required, that by an order of said Secretary of the Interior of date August 27, 1896, said pretended list of selections were cancelled, and the lands restored to the public domain, and made subject to entry, and settlement the same as other public lands, that the said Northern Pacific Railroad Company had knowledge of this fact and that the lands had been restored to the public domain and that the Secretary of the Interior intended to and did allow parties to enter said land in the same manner that other public lands were entered; that parties made application under the several land laws of the United States to purchase said land and advertised as the law requires that at a date certain, mentioned in said notice the applicant would make proof before the local officers of the land office of his or her right to purchase the same, and all persons having adverse interest in such tract of land were notified to appear and show cause if any existed why the applicant should not be allowed to purchase said land, and that at the time named in said notice the said company did not appear nor have they ever made any appearance or objection to the purchase thereof.

VII. And defendants further say that on the 13th day of November 1895, the Secretary of the Interior, by a de- 116 cision of that date, established the eastern terminus of the Northern Pacific Railroad Company for the adjustment of its land grant at some point not further east than Superior, Wisconsin. That on August 27, 1896, the Secretary of the Interior fixed the eastern terminus of the land grant to said company at Duluth, and at the same time restored to the public domain and subject to entry all lands lying east of the line then established by said decision. That on January 23, 1897, the Secretary of the Interior caused to be prepared a diagram showing the line thus established, a copy of which

was transmitted to the Register and Receiver of the Duluth Land District in which the lands in controversy are situated. That on the 17th day of July, 1897, the Commissioner of the United States General Land Office prepared a notice directed to said Register and Receiver. Said notice was approved by the Secretary of the Interior, and sent by said Commissioner to the Register and Receiver of the United States local land office at Duluth, Minn., in which was noted that the decision of the Secretary aforesaid had the effect to restore to the public domain all lands lying east of said terminal, and directed the said Register and Receiver to give public notice of the same by publishing a notice referring to said Secretary's decision which in effect declared that all lands previously withdrawn on account of the grant to the Northern Pacific Railroad Company, and lying east of the terminal established at Duluth, were restored to the public domain, and were subject to disposal at the local United States Land Office at Duluth. That said notice was directed to be published for a period of thirty days, to the end that all persons interested might have opportunity to present any claims they might have to any of the lands thus affected by said decisions that the said Northern Pacific Railroad had full and complete notice and knowledge of the contents of said notice and the publication thereof. A copy of said notice is hereunto attached and made a part of this answer, and marked Exhibit "A". That said
117 notice was by said Register and Receiver duly published as directed, and after the expiration of the period of thirty days, and after the restoration of these lands to the public domain, the said lands in which these defendants are interested were under the land laws of the United States duly and legally entered, and each and every location was previous to January 1, 1898, and after such location such proceedings were taken by said locator that a certificate was duly issued in the usual form to said locator for said lands. That from the date of the publication of said notice referred to, and up to the date of the commencement of this suit, neither the Northern Pacific Railroad Company nor the complainants nor any other party or person, made or filed any claim to any of the lands here in controversy with the Register and Receiver at Duluth, Minn., or in the General Land Office at Washington, D. C. adverse to the claim of the locators of such particular description, but that the entry man without opposition or objection from said Northern Pacific Railroad Company, or its grantees, was allowed to enter said land, and establish his claim thereto, and pay the amount for the same required by the government and to sell and dispose of said claim at its full value to bona fide purchasers thereof. That said locators were each actual and bona fide settlers over the age of 21 years

and citizens of the United States, each thus and otherwise having all the qualifications required by the land laws of the United States to obtain patents from the United States for said several descriptions of land by them located.

That these answering defendants as grantees of the original locators of said lands by deeds were and are bona fide purchasers for value of said lands respectively and have no notice or knowledge of any right or claim of the Northern Pacific Railroad Company therein. That at the time said respective deeds were executed and delivered to them they paid a valuable and adequate consideration therefor and purchased the same in good faith without any knowledge or notice of
118 any adverse claim or pretended claim by or on the part of the said Northern Pacific Railroad Company against the lands hereinbefore particularly described, or any part thereof and without any knowledge or notice of any adverse claim or pretended claim by any other person or persons corporation or corporations against the same or any part thereof. That said lands in which these defendants are interested are all outside of the place and of the first and second indemnity limits of the grant of said Northern Pacific Railroad Company.

That on the 17th day of April, 1897, by order of the Secretary of the Interior, there was endorsed upon each separate list of the selection of lands mentioned in said bill of complaint, as filed in the Duluth Local U. S. Land Office, the following words "Cancelling the within list to the extent of the tracts of, and outside, the terminal limits of the grant to the Northern Pacific Railroad Company" and defendants aver that each and every description of land in which defendants are interested in this controversy is situate outside of the limits of the grant to the Northern Pacific Railroad Company as established by the Secretary as above referred to or under the Act of Congress, July 2, 1864, or Joint Resolution of May 31, 1871.

And these defendants further answering say, that the grant to the Northern Pacific Railroad Company has not as yet been adjusted by the Secretary of the Interior, that defendants are informed and believe the fact to be that on the adjustment of said grant there will be found to be no deficiency in said grant, but there will remain a large quantity of land now withheld from entry that will be restored to the public domain. That there are now and were at the time of the commencement of this action many thousands of acres of vacant public lands in the odd sections within the first and second indemnity limits of the Northern Pacific Railroad Company which could be used for indemnity for lands lost within the place limits of said grant.

119 VIII. These defendants further answering say they are informed and believe it to be true that the Secretary of the Interior having refused to in any manner recognize the claimed rights of the Northern Pacific Railroad Company in and to the lands in controversy and other lands in Minnesota and conflicting claims having arisen as to these and other lands within the grant of said company.

The said railroad company caused to be introduced in the Congress of the United States a bill, having particular reference to the land in controversy, and all other lands of like character, entitled: "An Act entitled an Act to facilitate the adjustment by the land department of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company" and urged the Secretary of the Interior to consent to the passage of said bill, and that after certain modifications had been made in the original bill, as first presented, the same became a law with the approval of the President of the United States on the 1st day of July, 1898.

That by the terms of said Act among other things it is provided "That where prior to January first, 1898, the whole or any part of an odd numbered section, in either the granted or the indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of the grantee or its lawful successor is claimed to have attached by definite location or selection, has been purchased directly from the United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department, and where purchaser, settler or claimant refuses to transfer his entry as hereinafter provided, the railroad grantee or its successor in interest, upon a proper relinquishment thereof, shall be entitled to select in lieu of the land relinquished an equal quantity of public lands, surveyed or unsurveyed not mineral or reserved and valuable for stone, iron or coal and free from valid adverse claim or not occupied by settlers at the time of such selection, situated within any State or
120 Territory into which said railroad grant extents and
patents shall issue for the land so selected as though it had been originally granted; . . . Provided, however, that the Secretary of the Interior shall from time to time, ascertain and as soon as conveniently may be done, cause to be prepared and delivered to the said railroad grantees or its successors in interest a list or lists of the several tracts which have been purchased or settled upon or occupied as aforesaid, and are now claimed by said purchasers or occupants, their heirs or assigns, according to the smallest Government subdi-

visions; and all right, title and interest of the said railroad grantee or of its successors in interest in and to any of such tracts, which the said railroad grantee or its successor in interest may relinquish hereunder shall revert to the United States and such tracts shall be treated, under the laws thereof, in the same manner as if no right thereto had ever vested in said railroad grantee and all qualified persons who have occupied and may be on said lands as herein provided, or who have purchased said lands in good faith as aforesaid, their heirs and assigns shall be permitted to prove their titles to said lands according to law, as if said grant had never been made, and upon such relinquishment said Northern Pacific Railroad Company or its lawful successors in interest may proceed to select, in the manner hereinbefore provided, lands in lieu of those relinquished, and patents shall issue therefor: Provided Further, that the railroad grantee or its successor in interest shall accept said list or lists so to be made by the Secretary of the Interior, as conclusive with respect to the particular lands to be relinquished by it, but it shall not be bound to relinquish lands sold or contracted by it or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron or coal."

And these defendants further answer and say that the Northern Pacific Railroad Company and its successor in interest the Northern Pacific Railway Company have ever 121 since the passage and approval of said Act of July 1st, 1898, been acting and operating under said Act, that said companies have made numerous relinquishments thereunder and have taken lieu lands in place of the lands so relinquished by them under the terms and provisions of said Act; that the said Northern Pacific Railroad Company and its successors in interest the Northern Pacific Railway Company have in all things accepted and adopted the terms and conditions of the said act of July 1st, 1898, and are now and were long prior to the time complainants claim to have purchased the lands in controversy, accepting and exercising the rights and privileges conferred upon them thereby. And these defendants further answering say that the complainants John A. Humbird and Frederick Weyerhaeuser took, accepted and received from the said Northern Pacific Railway Company the deed of conveyance set forth and described in their bill of complaint, with full knowledge and notice of the fact that the said Northern Pacific Railroad Company had aided in securing the passage of said Act of July 1st, 1898, and that it and its successor in interest, had thereafter accepted, adopted and ratified the same and had in all ways availed themselves of the benefits conferred thereby. And these defendants further answering say that there was

issued from the General Land Office at Washington, D. C., a circular containing "Regulations under the Act of July 1, 1898 (30 Stat. 597, 620), to facilitate the adjustment by the Land Department of conflicting claims to lands, within the limits of the grant to the Northern Pacific Railroad Company, which circular was duly approved by the Secretary of the Interior, February 14th, 1899, and that said circular contains the land departments construction of said Act of July 1st, 1898, and provides the method, practice and procedure to be followed under said Act, that the said Northern Pacific Railroad Company and its successors in interest the Northern Pacific Railway Company accepted the construction placed upon said act by the land department and consented thereto and to all the rules and regulations secured lieu lands for those
122 relinquished under the Act of July 1st, 1898.

Section 9 of said circular is as follows, to wit:

"The railroad claim is one which arises from the definite location of the line of railroad if the land is within the primary limits of the grant, or which arises from a lieu selection if the land is within the indemnity limits, and is one which, in the absence of all individual claims, would enable the railroad claimant to obtain full title to the land."

Sec. 10 provides that, "The purpose of the act is to avoid further strife and contention before the Land Department between the railroad claimant upon the one hand and individual claimants upon the other hand, and that to that end the Act extends alternately to the individual claimant and the railroad claimant an opportunity to acquire other lands of equal area in lieu of those in contest. The privilege of making a lieu selection is not dependent upon success or failure in the contest, but rather upon the existence of a contest or controversy which is intended to be disposed of without subjecting the parties to the delay, expense and inconvenience incident to the further prosecution."

Section 17 of said circular is as follows: "The option of relinquishing the lands in contest (controversy) and selecting other lands in lieu thereof is by law first extended to the individual claimant and if he elects to hold the lands which are in contest (controversy) the railroad claimant will be called upon to relinquish the same and to select other lands in lieu thereof."

That after the issuance of said circular and at the request of the Northern Pacific Railroad Company and to the end that the benefits intended to be extended by said act might be still secured to those entitled thereto, and to avoid possible and unnecessary litigation in the Court as a result of the inadvertent or erroneous issuance of patents since July 1st, 1898, in such cases the following regulations was added to those adopted February 14, 1899, under said act, 123 namely "Where any portion of an odd numbered section within the limits of the grant to the Northern Pacific Railroad Company coming within the provisions of the act of July 1, 1898, as here construed, has been patented without following the provisions of that act, the individual claimant will, notwithstanding the issuance of such patent, be advised in the manner prescribed by paragraph 18, of the option accorded him by said act. If the patent was issued to him and he elects to relinquish his claim he will be required to make reconveyance of the land to the United States in the manner prescribed by paragraph- 24, 25 and 26; but if he elects to retain the land patented it will be listed according to paragraph 23, with a view to its relinquishment by the railroad company. If the patent was issued to the railroad company, and the individual claimant elects to retain the land so patented the company will be required to make reconveyance thereof to the United States according to paragraphs 24 and 26, wheupon the individual claimant may perfect title thereto and the railroad company may select other lands in lieu thereof as in other cases."

And these defendants allege that the above provision of the rules and regulations heretofore issued by the Land Department, at Washington, was thus amended at the special instance and request of the Northern Pacific Railroad Company, and by so doing the Northern Pacific Railroad Company adopted this form and mode of adjusting its grant, and that all the land claimed by the defendants in this controversy, come within the provisions of the Act of Congress of July 1, 1898, and the rules and regulations of the Land Department governing the same, and the defendants say that if it should appear that the Northern Pacific Railroad Company had any right, title or interest in and to any of the lands claimed by these defendants in this controversy these defendants refuse to relinquish the same and hereby give notice to complainants that they will retain said land under the terms and provisions of said Act of July 1st, 1898.

124 And these defendants further say that they believe it to be true that the said complainants are not bona fide purchasers, of the land described in Exhibit "A" attached to said complaint; that these defendants believe that the paper writing of the 19th day of January 1899, purporting

to be a warranty deed from the Northern Pacific Railway Company to the complainants was given to the complainants without consideration, under a secret understanding and agreement that the plaintiffs would not be required to pay the consideration agreed upon if the plaintiffs title should fail; that this action is a speculative one on the part of the plaintiffs and entered into with full knowledge of all the facts above recited, and the rights of defendants in said lands.

VIII. And these defendants further answering say they deny that all or any of the lands in which these defendants are interested and described in Exhibit "A" of complainants Bill of Complaint were wrongfully and unlawfully permitted by the proper officers of the Land Department of the United States to be entered under various land laws of the United States and final certificates of such entries were issued to the several persons entering the same; and these defendants aver and charge the truth to be that all the entries made of lands in which these defendants are interested were rightfully and lawfully accepted and received by said Land Department before January 1, 1898, and that all things done in and about said entries was in compliance with law and the rules and regulations of said Department.

IX. And these defendants further answering say they admit all the allegations of paragraph 12 of the Bill of Complaint, save only that they deny that the Northern Pacific Railroad Company or its grantees have or ever had any vested or other rights either in law or equity in or to any of the lands described in Exhibit "A" of Bill of Complaint in which these defendants have or claim to have any interest as above mentioned, and deny that all proceedings connected with the entries and locations mentioned in Exhibit "A" were
125 had without notice or knowledge of said Northern Pacific Railroad Company, or any one claiming under it or without any opportunity for said company or its assigns to be heard in opposition thereto.

X. And these defendants further answering say they admit that they are claiming all the rights of ownership either legal or equitable with which they purport to have been invested by the several instruments, conveyances or contracts shown by Exhibit "A" of the Bill of Complaint.

XI. And these defendants further answering say, they deny that they had any notice or knowledge of the claimed rights of the Northern Pacific Railroad Company or its assigns in and to the land in controversy and deny that they had any notice or knowledge of the facts alleged in the Bill of Complaint with reference to the grant of lands to said Northern Pacific Railroad Company or the location and construction of its line or lines of railroad as stated in the Bill of Complaint or of its selections of lands as therein stated or otherwise.

XII. And these defendants further answering say, they deny that all or any of the said entries and location of lands referred to in Exhibit "A" of the Bill of Complaint were allowed and the final certificates (and so far as issued the patents) issued under a mistake of law founded upon a certain erroneous ruling by the Secretary of the Interior to the effect that the said Northern Pacific Railroad Company and its successors in interest were not entitled to any lands by virtue of said Act of Congress, approved July 2nd, 1864, and said joint resolution approved May 31st, 1870, granting lands to said Northern Pacific Railroad Company east of that point on the line of said Northern Pacific Railroad where the same crosses the line of the St. Paul & Duluth Railroad known as Thomson Junction. And these defendants deny that the accuracy of such ruling, that is, to say, the question at what point is the eastern terminus of the land grant of the said railroad
126 company under the Act of Congress and joint resolution aforesaid, is the only question of law or fact at issue between complainants and these defendants. And these defendants say that they are informed and believe it to be true that the said Northern Pacific Railroad Company exclusive of all the lands in controversy have received many thousands of acres of land in excess of what said company were entitled to receive under said Act of Congress of July 2nd, 1864, and said joint resolution of May 31st, 1870.

XIII. And these defendants further answering say they admit the lands in controversy and in which they are interested are largely valuable for pine timber but deny that they have cut or removed any timber therefrom and deny that they have any intentions of so doing until such time as the controversy concerning the title to said lands shall be finally determined by the courts.

And these defendants hereby accept the tender of complainants made in their Bill of Complaint for answer of these defendants without oath and aver that they have full, true and direct answer made to all and singular the matters contained in said Bill of Complaint so far as they have any knowledge or information thereon.

These defendants therefore pray that it may be determined, adjudged and decreed that these complainants have no right, title or interest in and to any of the lands in controversy in which these defendants are interested and for such other and further relief as in equity may seem just and proper to this

honorable court and for their reasonable costs and charges allowed in this behalf. JOHN G. WILLIAMS,
Solicitor for Defendants Justin Wentworth and George K. Wentworth, Suite 607 First National Bank Bldg. Duluth, Minn.

127 EXHIBIT A.

Department of the Interior,
General Land Office,
Washington, D. C. July 17, 1897.

Register and Receiver,
Duluth, Minn.

Sirs: On August 27, 1896, the Secretary of the Interior rendered a decision wherein he held that the initial point on Lake Superior or the eastern terminus of the grant to the Northern Pacific Railroad Company was at Duluth, Minnesota, and on December 24, 1896, he approved a diagram prepared by this office showing the eastern terminal of the grant.

On January 23, 1897 a copy of so much of said diagram as related to, or affected lands within your district, was transmitted to you for the use and guidance of your office.

The decision of the Secretary aforesaid had the effect of restoring to the public domain all lands lying east of said terminal which had heretofore been withdrawn on account of the grant to said railroad company. Therefore, to the end that all persons interested may have an opportunity to present any claims they may have to any of these lands, you will cause to be published for the period of thirty days in some newspaper of general circulation in their vicinity, a notice referring to said Secretarys decision which in effect declared that all lands previously withdrawn on account of the grant to the Northern Pacific Railroad Company and lying east of the terminal establishment at Duluth, are restored to the public domain and are subject to disposal at your office. It should be specifically stated in said notice that all persons claiming rights, under the provisions of the Act of March 3, 1887. (24 Stat. 556) through purchase from the railroad company, should come forward and assert their claims at the earliest possible date in order to avoid conflicts which will necessarily arise through entries made under the general land laws, your office having no information as to the tracts likely to be
128 claimed under said act.

The receiver, as disbursing officer, will pay the cost of the publication and forward a copy of the notice, with proof of publication as his voucher for the disbursement.

BINGER HERMANN, Commissioner.

Approved:
C. N. BLISS,
Secretary of the Interior.

Indorsed: Filed November 8th, 1900. Henry D. Lang, Clerk. By Margaret McKay, Deputy Clerk.

Circuit Court of the United States, for the District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants,
vs. In Equity.
Waldo A. Avery, George B. Morley. et al. Defendants.

The replication of the above-named complainants to the answer of the defendants Justin Wentworth and George K. Wentworth.

These replicants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant for replication thereunder say that they do and will ever maintain and prove their bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendants is very uncertain, evasive and insufficient in the law to be replied unto by these replicants; without this, that any other matter or thing in said answer contained material or effectual in law to be replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these replicants are ready to aver, maintain, and prove as this honor-
129 able court shall direct, and humbly pray as in and by their said bill they have already prayed.

BILLSON, CONGDON &
DICKINSON & H. OLDENBERG,
Solicitors for Complainants,
511 Lonsdale Bldg,, Duluth, Minn.

Indorsed: Filed Nov. 8th 1900. Henry D. Lang, Clerk. By Margaret McKay, Deputy Clerk.

That thereafter, to wit, on the 15th day of February, A. D. 1901, there was filed with said Clerk a Bond for a Temporary Restraining Order in said cause; which said Bond is, in words and figures, as follows, to wit:

U. S. Circuit Court,
District of Minnesota—ss.

5th Division.

John A. Humbird & Frederick Weyerhaeuser, Plffs.
vs. In Equity.
Waldo A. Avery et al.

Know all men by these presents, That John A. Humbird & Frederick Weyerhaeuser as principals and Wm. W. Billson &

D. A. Dickinson as sureties are held and firmly bound unto Alger Smith & Co. one of the Defendants in the above entitled action in the sum of Five Hundred Dollars, lawful money of the United States, to be paid unto the said Alger Smith & Co. their successors heirs, executors, administrators or assigns, for which payment well and truly to be made, we jointly and severally bind ourselves, and each of our heirs, executors and administrators, firmly by these presents.

Sealed with out seals and dated this 11th day of February 1901.

The condition of this obligation is such, that whereas the above named Plaintiff have duly applied for a temporary restraining order against said Defendant in this action, according to the statute in such case provided;

130 Now, therefore, If the said Plaintiffs shall pay the said Defendant such damages as they sustain by reason of said order if the Court finally decide that the said Plaintiffs are not entitled thereto, then this obligation shall be void; otherwise to remain in full force.

In testimony whereof, we have hereunto set our hands and seals this 11th day of ....A. D. 189..

JOHN A. HUMBIRD [Seal]
FREDERICK WEYERHAEUSER,
By Wm. W. Billson their Agent & Atty. [Seal]
DANIEL A. DICKINSON [Seal]
WM. W. BILLSON. [Seal]

Signed, sealed and delivered in
Presence of
Lee W. Farmer
James Wanless.

State of Minnesota,
County of St. Louis—ss.

On this 11th day of February A. D. 1901, before me, a Notary Public within and for said County, personally appeared Wm. W. Billson & D. A. Dickinson to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed, and said Wm. W. Billson also acknowledged that he executed the same as the free act and deed of John A. Humbird & Frederick Weyerhaeuser.

JAMES WANLESS,
Notary Public, St. Louis Co., Minn.

State of Minnesota,
County of St. Louis—ss.

D. A. Dickinson & Wm. W. Billson being duly sworn, say each for himself, that he is one of the sureties above named; that he is a resident and freeholder of the State of Minnesota, and worth the amount of Five Hundred Dollars, specified in the foregong bond, above his debts and liabilities, and exclusive of his property exempt from execution.

D. A. DICKINSON.
WM. W. BILLSON.

Subscribed and sworn to before me, this 11th day of February, 1901.

[Notarial Seal] JAMES WANLESS,
Notary Public, St. Louis Co. Minn.

131 Indorsed: I hereby approve the within Bond and the sureties thereon. Dated Feby. 12, 1901. Wm. Lochren, Judge. Filed Feb. 15th, 1901. Henry D. Lang, Clerk. By Margaret McKay, Deputy Clerk.

That on the 27th day of February, A. D. 1901, there was filed with said Clerk Injunctional Affidavits and Order to Show Cause against Defendant Alger, Smith & Co. in said cause; which said Affidavits etc., are in words and figures, as follows, to wit:

United States Circuit Court, District of Minesota, Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants.
vs. In Equity.
Waldo A. Avery et al. Defendants.

State of Minnesota,
County of St. Louis—ss.

Joseph Nevin, being first duly sworn, deposes and says; that his business is, and for about eighteen years has been, that of a land-looker or explorer. That he is acquainted with the Southeast Quarter of the Northwest Quarter (S. E. o/4 of N. W. ¼) of Section Seventeen (17), in Township Fifty-three (53) North of Range Eleven (11) West, in Lake County, Minnesota, and visited and examined the same on or about the 25th day of January 1901. That affiant found that all of the merchantable pine timber, aggregating about four hundred thousand feet, had been cut and removed from the said land some time during the summer of last year. That affiant was upon the said land in April 1900, at which time all the said timber was standing and growing uncut upon the land.

132 That the defendant corporation, Alger, Smith & Company, are a logging and lumbering company, and have constructed a logging railroad through the said Section Seventeen (17), a short distance to the West of the forty acre tract above described, and since affiant's visit to the said land in April 1900, have cut the pine timber from the entire West half of the said Section Seventeen, and are now engaged in cutting upon the adjoining Section Twenty (20); that they are the only concern engaged now or during the past year in logging in that vicinity.

That in conversation with one John White, who is in charge of the loggings operations of the said Alger, Smith & Company in that vicinity, as Superintendent, foreman or walking boss, affiant was informed by the said White that the timber from the forty acre tract above particularly described had been cut and removed by Alger, Smith & Company last summer.

That upon the occasion aforesaid of his recent visit to the said vicinity, affiant also found the employees of Alger, Smith & Company engaged in cutting railroad ties from the East Half of the Northeast Quarter, and the Northwest Quarter of the Southeast Quarter, of Section Eleven, in Township 53 North, of Range 12 West, in Lake County, Minnesota, and in conversation with said employees was informed by them, and particularly by one Robert White who was engaged in cutting the said ties under a contract with said Alger, Smith & Company, that it was the intention of said Alger, Smith & Company, to commence at once the cutting of the pine timber from the three forty acre tracts last described, and also from the Southeast Quarter of Section 5, in the said Township 53 North, of Range 12 West, and other lands in that vicinity owned by the complainants in this cause, the timber from which lands it was claimed had been bought by said Alger, Smith & Company from Richardson & Avery.

That independently of statements made to affiant by the parties above referred to, affiant is personally familiar with the plant and operations of the said Alger, Smith & [compant], are such as to make it evident that the cutting of the pine from said forty acre tract was done by the said Alger, 133 Smith & Company, there having been no other concern engaged in logging in that vicinity.

That the land in the vicinity aforesaid is valuable mainly on account of the timber growing upon it, there being very little if any value in the land apart from the timber.

Further affiant saith not, save that he makes this affidavit in support of a motion for a temporary injunction in said cause.

JOSEPH NEVIN.

Subscribed and sworn to before me this 5th day of February, A. D. 1901.

[Notarial Seal] WM. W. BILLSON, Notary Public.
St. Louis County, Minnesota.

United States Circuit Court, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants.
vs. In Equity.
Waldo A. Avery et al., Defendants.

State of Minnesota,
District of Minnesota,
County of St. Louis—ss.

William W. Billson, being first duly sworn, deposes and says, that he is one of the solicitors for the complainants in the above entitled cause; that the evidence on behalf of the complainants in said cause is substantially complete and consists of testimony taken before Thomas H. Pressnell, Esquire, General Examiner of said Court in and for said Fifth Division, and duly reported and returned by him into the office of the Clerk of said Court, at Duluth in said Fifth Division of said District, and of depositions de bene esse duly taken under the act of Congress in that behalf made and provided and duly returned to the office of the Clerk of this court for the Fifth Division aforesaid; that the said testimony consists very largely of certified transcripts of public records
134 from the General Land Office of the United States, various local land offices of the United States and from other public offices; and that the testimony so taken establishes all the allegations of the bill of complaint. That many of the said documents and records are extremely voluminous. That all of the said testimony was taken upon due notice to the defendants and in the presence of their respective counsel, and with cross examination by them, and that complainants hereby refer to the same and ask that the same may be considered in support of complainants motion for an injunction in like manner and with like effect as though hereto annexed or otherwise specially filed or submitted as affidavits or exhibits in support of said motion. That the defendant Alger, Smith & Company, a Michigan corporation, by their answer in said cause denied that they had cut or were intending to cut any timber from the lands in controversy in this cause until the

title to the same should be finally determined by the courts; but that as shown by the annexed affidavit of Joseph Nevin, the said defendant company has since then cut all the pine timber from one of the said parcels of land, and is intending to cut the timber from other parcels. That the value of the different tracts of lands referred in the affidavit of said Nevin is nominal only, apart form the pine timber thereon. Further affiant saith not, save that he makes this affiadvit in support of a motion for a temporary injunction restraining the said defendant Alger, Smith & Company from cutting or removing from any of the lands involved in this action any pine or other merchantable timber, pending the final determination of this cause and until the further order of the Court.

WM. W. BILLSON.

Subscribed and sworn to before me this 11th day of February, A. D. 1901.

(Notarial Seal.) JAMES WANLESS, Notary Public,
St. Louis County, Minnesota.

135 United States Circuit Court, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerbaeuser, Complainants,
vs. In Equity.
Waldo A. Avery et al., Defendants.

On reading the pleadings in this cause and the affidavits of Joseph Nevin and William W. Billson, and on motion of Messrs. Billson, Congdon & Dickinson and H. Oldenberg solicitors for the complainants, it is hereby ordered on the said pleadings and affidavits, and on the testimony and depositions heretofore taken on behalf of complainants in said cause and filed in the office of the Clerk of said Court in and for the Fifth Division of said district, that the defendant corporation Alger, Smith & Company show cause if any there be, at my chambers in the Federal Building in the City of Minneapolis in said district, on the 26th day of February, A. D. 1901, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why provisional or temporary injunction should not issue pursuant to the prayer of the bill of complaint in this cause, restraining the said Alger, Smith & Company from cutting or removing from any of the premises described in the bill of complaint, or in Exhibit A thereto attached, any timber standing or lying thereon during the pendency of this cause and until the further order of the Court. It is further ordered that a copy if this order be served upon the defendant Alger, Smith & Company within three days from the date hereof. It is further ordered that until the decision upon the motion of the complainants for said temporary injunction, the defendant Alger, Smith & Company, its officers, agents and employees be and are hereby restrained from cutting or removing from any of the lands described in the bill of complaint herein any of the timber standing or lying thereon pending the final determination of this cause or until the further order of the Court.

Dated February 12th, 1901.

WM. LOCHREN, Judge.

136 State of Minnesota,
County of St. Louis—ss.

Lee W. Farmer, being first duly sworn, deposes and says, that at Duluth in said County and State, on Friday the 15th day of February, A. D. 1901, he served the foregoing affidavits and order upon Alger, Smith & Company, the defendant corporation therein named, by handing and leaving with Ralph N. Marble, Assistant General Manager of said Company, true copies thereof.

LEE W. FARMER.

Subscribed and sworn to before me this 15th day of February, A. D. 1901.

WM. W. BILLSON, Notary Public.
St. Louis County, Minnesota.

Indorsed: Personal service of copies of within affidavits & Order admitted this 15th day of Feb. 1901.

TOWNE & HARRIS,
Solicitors for Alger Smith & Co.

Filed Feb. 27th, 1901. Henry D. Lang, Clerk. By Margaret McKay, Deputy Clerk.

That on the same day, to-wit: on the 27th day of February A. D. 1901, there was filed with said Clerk a Stipulation and Order continuing the date of hearing on the Order to Show Cause, next above noted, in said cause; which said Stipulation and order are, in words and figures, as follows, to-wit:

United States Circuit Court, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants,
vs. In Equity.
Waldo A. Avery et al., Defendants.

It is hereby stipulated in the above entitled cause, that the hearing upon the complainants' order to show cause why the defendants Alger, Smith & Company, should not be enjoined as prayed in the Bill of Complaint, heretofore set 137 for hearing on the 26th day of February, 1901, be and is continued until nine o'clock A. M. of Tuesday the 12th day of March of said year, at the place named in the said order to show cause, and that an order providing for such continuance, or for a continuance to such other time and place as may suit the convenience of the Court, may be made on the application of complainants' Solicitors, without notice.

Dated Feb. 25th A. D. 1901.

BILLSON, CONGDON & DICKINSON,
& H. OLDENBERG,
Solicitors for Complainants.
TOWNE & HARRIS,
Solicitors for Alger, Smith & Company.

On reading the foregoing stipulation it is ordered that the hearing on the order to show cause therein mentioned be & is continued as therein agreed.

Dated Feb. 26th, 1901.

WM. LOCHREN, Judge.

Indorsed: Filed Feb. 27th, 1901. Henry D. Lang, Clerk. By Margaret McKay, Deputy Clerk.

That on the 11th day of April, A. D. 1901, there was filed with said Clerk a Stipulation making J. H. Gruber a party defendant in said cause; which said Stipulation is in words and figures, as follows, to wit:

138 United States Circuit Court, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhauser, Plaintiffs,
vs. In Equity.
Waldo A. Avery et al., Defendants.

It is stipulated by and between the plaintiffs in the above entitled cause, and J. H. Gruber, of Duluth, Minnesota, that the said J. H. Gruber may be and is made a party defendant to the said cause, and that an order making him such party may be entered by the Court, on motion of the complainants, without notice: that the answer filed in said cause by the defendants George K. Wentworth and Justin Wentworth, shall stand and be considered the answer in this cause of the said J. H. Gruber as a defendant therein, the land claimed by the said J. H. Gruber being the North Half of the Southwest Quarter of Section Nineteen, in Township Fifty-four (54), North, of Range Fifteen (15) West, (the same being also described as the Northeast Quarter of the Southwest Quarter and Lot Three).

It is further stipulated that the replication heretofore filed by the complainants to the answer of the said George K. Wentworth et al., shall stand as a replication to the answer of the said J. H. Gruber.

The said J. H. Gruber also hereby waives all notices of the taking of testimony or other interlocutory proceedings in said cause, and of the final hearing thereof.

Dated Duluth, Minnesota, January 14th, 1901.

H. OLDENBURG & BILLSON,
CONGDON & DICKINSON,
Solicitors for Complainants.
J. H. GRUBER.

Indorsed: Filed April 11, 1901. Henry D. Lang, Clerk. By Thos. H. Pressnell, Deputy Clerk.

139 That on the same day, to wit, on the 11th day of April, A. D. 1901, there was filed with said Clerk a Stipulation that the Answer of Waldo A. Avery et al. herein, may be considered as the Answer of defendant J. B. Kehl, in said cause; which said Stipulation is, in words and figures, as follows, to wit:

United States Circuit Court, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants,
vs. In Equity.
Waldo A. Avery et al., Defendants.

It is stipulated by and between the complainants in the above entitled cause, and J. B. Kehl, one of the defendants therein, that the answer filed herein by Waldo A. Avery et al. shall stand and be considered as also the answer of the said defendant J. B. Kehl; the interest claimed by the said Kehl in the lands described in the bill of complaint being the pine timber on the North Half of the Northeast Quarter, the South Half of the Northeast Quarter, and the North Half of the Southeast Quarter of Section Three (3), in Township Fifty-two (52) North, of Range Twelve (12) West.

It is further stipulated that the replication heretofore filed by the complainants to the answer of the said Waldo A. Avery et al. shall stand as a replication to the answer of the said J. B. Kehl.

The said J. B. Kehl also hereby waives all notices of the taking of the testimony or other interlocutory proceedings in said cause, and of the final hearing therein, and it is agreed that all testimony heretofore taken in said cause shall stand as testimony duly taken upon the issues raised by the said answer of said J. B. Kehl.

Dated Duluth, Minnesota, January 5th, 1901.
140 H. OLDENBURG &
BILLSON, CONGDON & DICKINSON,
Solicitors for Complainants.
J. B. KEHL.

Indorsed: Filed April 11, 1901. Henry D. Lang, Clerk. By Thos. H. Pressnell, Deputy Clerk.

That further on the same day, to wit, on the 11th day of April, A. D. 1901, there was filed with said clerk an Order of Court continuing the hearing on Injunction proceedings in said cause; which said Order is, in words and figures, as follows, to wit:

United States Circuit Court, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants,
vs.
Waldo A. Avery et al., Defendants.

On motion of the solicitors for complainants, the solicitors for defendants consenting thereto, it is Ordered:

That the hearing upon the order to show cause heretofore issued under date of February 12th, 1901, requiring the defendant Alger, Smith & Company, to show cause why provisional or temporary injunction should not issue against them pursuant to the prayer of the bill of complaint herein, be and is further continued until ten o'clock a. m. of Tuesday the 14th day of May, A. D. 1901, at the Court Room in the Federal Building in the City of Duluth, in said District.

Dated March 20th, 1901.

WM. LOCHREN, Judge.

Indorsed: Filed April 11, 1901. Henry D. Lang, Clerk. By Thos. H. Pressnell, Deputy Clerk.

141 That on the 3rd day of May, A. D. 1901, there was filed with said clerk a stipulation to place said cause upon the trial calendar for the May A. D. 1901, term of said court, together with a note of issue in said cause; which said stipulation and note of issue are in words and figures, as follows, to wit:

United States Circuit Court, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants,
vs. In Equity.
Waldo A. Avery et al., Defendants.

It is stipulated that the above entitled cause shall be placed upon the calendar for the May Term A. D. 1901, without notice.

Dated Duluth, Minn., April 39, 1901.
BILLSON, CONGDON & DICKINSON,
& H. OLDENBERG,
Solicitors for Complainants.
H. H. HOYT,
S. H. MOER,
JOHN G. WILLIAMS,
TOWNE & HARRIS,
JAQUES & HUDSON,
M. H. STANFORD,
Solicitors for Defendants for whom they appear.

Indorsed: Filed May 3, 1901. Henry D. Lang, Clerk. By Thos. H. Pressnell, Deputy Clerk.

United States Circuit Court, District of Minnesota, Fifth Division.

John A. Humbird & Frederick Weyerhaeuser, Complainants,
vs. In Equity.
Waldo A. Avery et al., Defendants.

Note of Issue.

Issue of Fact (In Equity). Last Pleading Served Nov. 7, 1900. Billson, Congdon & Dickinson & H. Oldenburg, Attorneys for Plaintiffs. H. H. Hoyt, S. H. Moer, M. H. Stanford, Jno. G. Williams, L. C. Harris, Jaques & Hudson, Attorneys for Defendants for whom they appear.

142 Will the Clerk please file this Note of Issue, and enter the cause on the Calendar for the May A. D. 1901 General Term of this Court. Yours &c.
BILLSON, CONGDON &
DICKINSON & H. OLDENBURG,
Attorneys for Complainants.

Indorsed: Filed May 3, 1901. Henry D. Lang, Clerk. By Thos. H. Pressnell, Deputy Clerk.

That said cause was by the said Clerk duly placed on the trial Calendar for the May A. D. 1901 term of said court, and that the following proceedings were had therein:

United States Circuit Court, for the District of Minnesota, Fifth Division.

Term Minutes May Term, A. D. 1901. May 18th, 1901

Saturday Morning.

Court opened pursuant to adjournment.

Present: Honorable William Lochren, Judge; Hon. William H. Grimshaw, U. S. Marshal, By C. A. Nimocks, Deputy; Henry D. Lang, Clerk, By T. H. Presnell, Deputy.

* * * * * *

John A. Humbird et al.
No. 359. vs.
Waldo A. Avery et al.

Pursuant to the Agreement and consent of the Solicitors for the respective parties to this cause, it is by the Court,

Ordered, That said cause, be, and the same hereby is, set down for hearing and argument at Minneapolis, Minnesota, on the 16th day of July A. D. 1901, at ten o'clock a. m.

Ordered: That this Court do now adjourn until opened for the further transaction of business that may arise previous to the day next preceding the opening of the next General Term for said Division of the District.

A true record.

Attest: HENRY D, LANG, Clerk.
By Thos. H. Pressnell, Deputy Clerk.

143 That on the 8th day of August A. D. 1901, there was filed with said Clerk certified copies of orders of continuance made by the Court in the Fourth Division of said District; which Orders are in words and figures, as follows, to wit:

United States Circuit Court for the District of Minnesota, Fourth Division.

Term Minutes. March Term A. D. 1901. July 16th, 1901.

John A. Humbird et al.
vs.
Waldo A. Avery et al.

The above entitled cause having heretofore been set for hearing at this time and place, it is now by the Court

Ordered: That the hearing herein be and the same hereby is continued until Thursday morning, July 25th, 1901, at ten o'clock.

Ordered: That this Court be and the same hereby is adjourned until Thursday morning, July 25th, 1901, at ten o'clock.

United States of America,
District of Minnesota,
Fourth Division—Sct.

I, Henry D. Lang, Clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that I have carefully compared the foregoing paper writing. .with the original thereof, which is in my custody as such clerk, and that such copy is a correct copy of such original and of the whole thereof, in the cause therein named.

Witness my hand as Clerk, and the seal of said court. Done at my office in Minneapolis, Minnesota, this 7th day of August A. D. 1901.

[Court Seal] HENRY D. LANG, Clerk.
By Robert C. Mabey, Deputy.

Indorsed: Filed August 8th, 1901. Henry D. Lang, Clerk. By Margaret McKay, Deputy, Clerk.

144 United States Circuit Court for the District of Minnesota, Fourth Division.

Term Minutes. March Term, A. D. 1901. July 25th, 1901.
Thursday Morning.

Court opened pursuant to adjournment.

Present: Honorable William Lochren, Judge. William H. Grimshaw, U. S. Marshal. Henry D. Lang, Clerk. By Robert C. Mabey, Deputy.

John A. Humbird et al.
vs.
Waldo A. Avery et al.

The above entitled cause having been heretofore continued for hearing to this time and place, it is now by the Court

Ordered: That the hearing herein be and the same hereby is further continued until such time and to such place as the Court and counsel may hereafter agree upon.

United States of America,
District of Minnesota,
Fourth Division—Sct.

I, Henry D. Lang, Clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that I have carefully compared the foregoing paper writing..with the original thereof, which is in my custody as such clerk, and that such copy is a correct copy of such original..and of the whole thereof, in the cause therein named.

Witness my hand as Clerk, and the seal of said Court. Done at my office in Minneapolis, Minnesota, this 7th day of August A. D. 1901.

[Court Seal] HENRY D. LANG, Clerk.
By Robert C. Mabey, Deputy.

Indorsed: Filed August 8th, 1901. Henry D. Lang, Clerk. By Margaret McKay, Deputy Clerk.

That the testimony submitted in said cause is as follows, to wit:

145 In pursuance of the stipulation hereto annexed, at ten o'clock a. m. of Friday, the seventh day of December, A. D. 1900, at the office of the Commissioner of the General Land Office of the United States, in the City of Washington, in the District of Columbia, there appeared before me, Charles B. Strong, a Notary Public in and for the District of Columbia aforesaid, W. W. Billson, Attorney for the complainants, and Messrs. H. H. Hoyt and S. H. Moer, Attorneys for the defendants in the above entitled cause.

Whereupon, Alexander Britton of said city, being by me first duly sworn as a witness in said cause on behalf of the complainants, testified as follows:

Examined by Mr. Billson.

Q. Mr. Britton, are you one of the legal representatives in the City of Washington of the Northern Pacific Railroad Company?

A. I am a member of the firm of Britton & Gray, which represents the Northern Pacific Railway Company before the departments in the City of Washington.

Q. To whom has it been customary for the Commissioner of the General Land Office to send or deliver notices or lists of lands in controversy, in pursuance of the provisions of the Act of July, 1898?

A. After the list of lands for which the Government desires a reconveyance by the Company has been approved by the Secretary of the Interior, it has been the custom of the Commissioner of the General Land Office to transmit one copy thereof to the firm of Britton & Gray, as the representatives of the Northern Pacific Railway Company, requesting a reconveyance of the land included in said list, or a showing of cause why such reconveyance should not be made.

Q. So far as you know, have all the communications of the Commissioner under that Act been thus addresed to your firm?

A. So far as I know, they have, in so far as the Northern Pacific Railway Company was called upon to respond. There may have been communcations to individual claimants adverse to the Company which were not sent to us.

146 Q. Have there been served upon you any such notices, lists or requests with respect to lands lying east of the Duluth Terminal as established by the Department in 1896?

A. There have not. Three lists of lands within the State of Minnesota have been served upon us; but all lands included in said lists lie in Range 39, W., of the Fifth Principal Meridian, or west thereof—none of them lying east of the terminal so established.

Q. And if any such list or notice had been served upon the firm of Britton & Gray, would you have known it?

A. I would.

Cross-Examination

By Mr. Moer:

Q. Has the Northern Pacific Railway Company been, from time to time, acting under the Act of July 1, 1898?

A. It has.

Q. Relinquishing lands and accepting new lands, or accepting the provisions of the Act in other States besides Minnesota, and in Minnesota?

A. It has filed certain relinquishments of lands under the Act of July 1, 1898, and selected other lands in lieu thereof.

Q. Do you know whether or not a formal acceptance on the part of the Northern Pacific Railway Company of the provisions of the Act of July 1, 1898, has ever been filed with the Department?

A. I have no personal knowledge, although I understand such a formal acceptance was filed.

Q. It was not done by your firm as attorneys for the Northern Pacific Railway Company? A. It was not.

Q. I understand you to say that no lists of the lands lying east of the Duluth Terminal has ever been served upon your firm as representing the Northern Pacific Railway Company?

A. None.

147 Q. In fact, as you understand it, the Department has taken the position that the Northern Pacific Railway Company was not entitled to the lands?

A. The Interior Department originally decided that the Company was not entitled to lands east of the Duluth Terminal; but after the decision of the United States Supreme

Court at the October Term, 1899, it has recognized the right of the Northern Pacific Railway Company to lands east thereof.

Q. So far as the lands are concerned in the matter in controversy, the Interior Department has not recognized any rights on the part of the Northern Pacific Railway Company ot those lands; has it?

A. I have not examined, in detail, the lands involved in the present litigation; so that I could not answer.

Q. The grant east of Duluth has not yet been adjusted, has it?

A. The grant, as a grant, is treated, according to my understanding, as an entirety, and has not yet been adjusted.

Q. I understand you to say that three lists have been served upon you of lands in Minnesota and west of Range 39?

A. Three lists of lands under the Act of July 1, 1898, have been served upon the firm of Britton & Gray which include lands in the State of Minnesota west of Range 39, Fifth Principal Meridian.

Q. And the railroad company relinquished those lands and accepted new lands for them, or accepted the provisions of the Act of July 1, 1898, did it, if you know?

A. My recollection is that relinquishments, either partial or in whole, were filed under said lists.

ALEX. BRITTON.

Subscribed and sworn to before me this 8th day of December A. D. 1900.

(Notarial Seal.) CHARLES B. STRONG,
Notary Public, D. C.

Whereupon, the further taking of testimony in this cause was adjourned.

148 The examination of witnesses de bene esse, beginning on the twenty-fifth day of January, A. D. 1901, on behalf of the complainants, before me, E. L. White, a Notary Public in and for the District of Columbia, at the law offices in Britton & Gray, in the Glover Building, No. 1419 "F" Street, Northwest, in the City of Washington and District of Columbia, in a certain suit [nor] depending and undetermined in the Circuit Court of the United States for the District of Minnesota, Fifth Division, wherein John A. Humbird and Frederick Weyerhaeuser are complainants, and Waldo A. Avery and others are defendants.

Earl L. Marvin, a witness produced by and on behalf of the complainants, having been first duly sworn, testified as follows:

By Mr. Billson:

Q. Please state your name, residence and occupation.

A. My name is Earl L. Marvin; I am thirty-four years of age; I reside at St. Paul, Minn. I am employed as status and title-clerk of the land department of the Northern Pacific Railway Company.

Q. How long have you been employed in the land department of the Northern Pacific Company?

A. It will have been seven years the 22nd day of the coming March.

Q. State in a general way the extent, if any, of your familiarity during that time with the records of the local land offices along the line of your road, and of the General Land Office.

A. In the course of the last seven years, I have examined the tract books and records for various purposes of the local offices at Duluth, St. Cloud, Crookston, Grand Forks, Devil's Lake, Bismark, Spokane Falls, Lewiston, Idaho, Missoula, Mont., Helena, Mont., Kalispel, Mont.; I have also examined the tract-books of the General Land Office for the States of Minnesota, Montana, Idaho, Washington and Oregon, as far as the same include tracts within the grant of the Northern Pacific.

149 Q. Mr. Marvin, prior to the recent examinations which you have made in the General Land Office, how much time had you had occasion to spend in examining the records of that office?

A. I spent, at one time, during the winter of 1895 and 1896, five months in examining the tract-books and other records of the General Land Office.

Q. Do you refer to the records generally of that office, so far as they relate to the land included within any of the limits of your Northern Pacific Railroad grant?

A. I do.

Q. Upon the occasion to which you refer, in 1895, what was the nature of your work in the General Land Office, and with whom did you co-labor?

A. I was assisted in the examination of the records by one clerk from the land department of the Northern Pacific road, and also by two clerks assigned to assist us from Division F of the United States General Land Office.

Q. What was the object of the examination?

A. We were making an examination of the records with a view of adjusting the land grant of the Northern Pacific Railroad.

Q. Have you recently made an examination of the land records at Washington to ascertain the quantity of lands in the odd-numbered sections in the State of Minnesota embraced in the 20-mile or place limits of the land grant to the Northern Pacific Railroad Company under the act of July 2, 1864? A. I have.

Q. Have you also made an examination of those records to ascertain the quantity of lands in the odd-numbered sections within the 20-mile or place limits of that grant in the State of Minnesota which, at the date of definite location of the line of said road opposite thereto, had been reserved, sold, granted or otherwise appropriated or become subject to preemption or other claims or rights. A. I have.

150 Q. Have you recently made a similar examination to ascertain the total area of lands in odd-numbered sections in the State of Minnesota lying within the 20-30 mile or first indemnity limits of that grant? A. I have.

Q. Have you recently made a similar examination to ascertain the total area of lands in the odd-numbered sections within the 20-30 mile or first indemnity limits of that grant in the State of Minnesota which, at the date of the definite location of the line of said road opposite thereto, had been reserved, sold, granted or otherwise appropriated or become subject to pre-emption or other claims or rights? A. I have.

Q. Have you also recently made a similar examination to ascertain the quantity of lands in the odd-numbered sections within the 20-mile or place limits of that grant in the State of Minnesota which were granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of subsequent to July 2, 1864, and prior to the definite location of the line of said road opposite thereto? A. I have.

Q. To what records did you have recourse in making these examinations?

A. I examined the tract-books of the land office as far as they covered any lands lying in the odd sections within the granted limits of the Northern Pacific, and also the maps of the withdrawal, as used by division F of the General Land Office in the adjustment of the grant of the Northern Pacific. I also used the schedules prepared by Division F of the General Land Office, showing the adjustment of that grant, and used as the basis of the Commissioners' report to the Secretary of the Interior, dated June 7, 1900, on the adjustment of the Northern Pacific grant.

Q. In refering to the tract-books relating to the grant of limits, do you mean the original place limits only, or all of the limits, including the first and second indemnity? 151

A. When I speak of the granted limits, I mean the place limits.

Q. How about the first indemnity limits?

A. I also examined the tract-books covering the odd sections included within the first indemnity limits.

Q. And the other records to which you refer?

[—] And the other records of the withdrawal maps as used for the same limits.

Q. What is Division F of the General Land Office?

A. Division F of the General Land Office is called the railroad division, I believe.

Q. Has it charge of the adjustment of railroad grants?

A. Yes, sir.

Q. What is the nature of the tract-books to which you refer?

A. The tract-books are a record kept for the purpose of showing the disposition of the public domain under the Land Laws of the United States.

Q. What classes of dispositions of public land are entered upon that?

A. All homestead entries, pre-emption entries, locations of scrip and warrants, selections by a State for various purposes, selections by railroads under their grants, and reservations made for Indian and military purposes.

Q. Is there any form of disposition of public land which is not entered in those books? A. I know of none.

Q. Does the tract-book also disclose the area of the several tracts? A. Yes, sir.

Q. Approximately how long were you engaged in making these examinations? A. This latter examination?

Q. The recent examinations to which you have re-
152 ferred in your testimony? A. About seven weeks.
Q. When did you complete it?

A. I completed my examination on the 24th instant.

Q. Did any one assist you in these examinations?

A. I was assisted by Mr. Behrend Holsberg.

Q. In what way and to what extent did he assist you?

A. Mr. Holsberg read to me the descriptions, dispositions and remarks shown on the schedules of adjustment as compiled by Division F of the General Land Office, and used by me in my examination.

Q. Did he do anything else beside read from the records?

A. No, except to take such memoranda as I dictated to him for my own information.

Q. In stenographic notes?

A. Part in stenographic notes and part in longhand.

Q. Referring to these adjustment schedules, Mr. Marvin, will you please indicate by general dimension about the magnitude of those records, so far as they relate to the State of Minnesota?

A. The form used by the General Land Office in the adjustment of railroad grants is a sheet of paper ruled and headed and about, I should say, eighteen by twenty-four inches in dimensions, written upon one side only.

Q. And approximately how thick a package of those sheets is there?

A. I should say there are probably from five to seven hundred sheets.

Q. Please state, if you can, the quantity of lands in the odd-numbered sections in the State of Minnesota embraced in the 20-mile or place limits of the land grant to the Northern Pacific Railroad Company under the act of July 2, 1864, as shown by the records of the General Land Office.

Mr. Moer: Objected to as incompetent, irrelevant and immaterial.

Objection overruled; Defendant excepts.

153 A. I found that the total area of the odd sections within the place limits of the grant to the Northern Pacific Railroad Company in Minnesota was 2,866,409.25 acres.

Q. State, if you can, the quantity of lands in the odd-numbered sections within the 20-mile of place limits of that grant in the State of Minnesota which, at the date of definite location of the line of said road opposite thereto, had been reserved, sold, granted or otherwise appropriated or become subject to pre-emption or other claims or rights, as shown by the records of the General Land Office?

Mr. Moer: Objected to as incompetent. Overruled; Defendan excepts.

A. I found 1,320,466.89 acres disposed of.

Q. State, if you can, from an examination of the said records, the defendant classes or kinds of losses thus suffered, and the quantity of lands of each class thus lost?

Mr. Moer: Objected to as incompetent. Overruled; Defendant excepts.

A. I found that there were lost by reason of swamp selections, private entries, State selections, etc., 814,299.69 acres. By reason of the lands lost to the Company by the attachment of the right of the Lake Superior & Mississippi Road within their 10-mile limits, 153,332.81 acres. Within the 15-mile limits of the St. Paul & Northern Pacific, 166,445.64 acres. Within the 10-20 mile limits of the Lake Superior & Mississippi road, 113,979.55 acres. Within the White Earth Indian reservation, 72,409.20 acres.

Q. In describing the quantities of land lost within the limits of certain railroad grants in your answer to the last question, do you mean that the quantities which you have there stated were lost on account of those several railroad grants and within the limits defined?

A. As far as the Lake Superior & Mississippi conflict is concerned, the losses given mean the losses arising from the attachment of the rights of that road.

154 Q. How with respect to the St. Paul & Northern Pacific?

A. In the St. Paul & Northern Pacific, the loss given is the total area within those limits, and is not an area indicating the loss by that particular road. It is the loss of all the lands within those limits.

Q. State, if you can, the total area of lands in the odd-numbered sections in the State of Minnesota, lying within the 20-30 mile or first indemnity limits of the said grant to the Northern Pacific Railroad Company as shown by the records of the General Land Office?

Mr. Moer: Objected to as incompetent. Overruled; defendant excepts.

A. The total area of the different sections within the 20-30 mile or first indemnity limits of the Northern Pacific Railroad is 1,491,067.41 acres.

Q. State, if you can, the total area of lands in the odd-numbered sections within the 20-30 mile or first indemnity limits of that grant in the State of Minnesota, which, at the date of the definite location of the line of said road opposite thereto, had been reserved, sold, granted or otherwise appropriated or become subject to pre-emption or other claims or rights, as shown by the records of the General Land Office.

Mr. Moer: Objected to as incompetent. Overruled; defendant excepts.

A. 1,037,086.19 acres disposed of.

Q. State, if you can, from an examination of the said records the different classes of losses thus suffered, and the quantity of lands of each class thus lost.

Mr. Moer: Objected to as incompetent. Overruled; defendant excepts.

A. I cannot give a detailed statement of the classes of losses within the indemnity limits, having only an aggregate figure of the lands disposed of within those limits.

155 Q. State, if you can, the quantity of lands in the odd-numbered sections within the 20-mile or place limits of that grant in the State of Minnesota which were granted, sold, reserved, occupied by homestead settlers, pre-

empted or otherwise disposed of subsequent to July 2, 1864, and prior to the definite location of the line of said road opposite thereto, as shown by the records of the General Land Office.

Mr. Moer: Objected to as incompetent. Overruled; defendant excepts.

A. I shall have to give that figure in detail.

Q. Very well.

A. There was lost subsequent to July 2, 1864, and prior to the date of definite location opposite thereto within the 20-mile limits of the Northern Pacific grant in the State of Minnesota, by reason of White Earth Indian reservation, 72,409.20 acres; by reason of private entries, etc., 252,179.46 acres; by reason of the attachment rights of the Lake Superior & Mississippi road within their 10-20 miles limits, 113,979.55 acres.

Q. Referring to that last item of 113,979.55 acres, have you undertaken, Mr. Marvin, to discriminate definitely between the lands lost or disposed of prior and subsequent to July 2, 1864, or have you included in that item all the lands which enured to the Lake Superior & Mississippi Railroad within its 10-20 mile limits, which also lay within the place limits of the Northern Pacific.

A. The figure 113,979.55 represents only such lands within the 10-20 mile Lake Superior & Mississippi limits as are lost to the Northern Pacific by reason of the attachment of the rights of that road, not representing lands lost by reason of any other cause.

Q. But it represents, does it, all of the lands within those limits that were lost on account of the Lake Superior & Mississippi grant? A. Yes, sir; within the 10-20 mile limits.

156 Q. As to that particular group of lands, have you undertaken to discriminate between such lands as should be regarded as lost prior to July 2, 1864, and such as should be regarded as lost subsequent thereto?

A. I have considered those lands as lands lost subsequent to July 2, 1864. I believe there is some question of law and fact in relation to these lands which I have not attempted to settle. I simply have included them as being lands lost to the grant subsequent to July 2, 1864.

Q. Then any portion of the lands included in this group of 113,979.55 acres, which, upon all the testimony may appear to have been lost prior to July 2, 1864 by reason of the Lake Superior & Mississippi grant, should be deducted from this quantity of 113,979.55 acres?

A. If any of the lands going to make up this item of 113,979.55 acres were lost prior to July 2, 1864, they should be deducted from that figure.

Q. What I wanted to draw out particularly, Mr. Marvin, is whether you undertook to pass judgment upon that question?

A. No, sir, I have not. I have simply included all of the lands within that 10-20 mile limits of the Lake Superior & Mississippi road which were lost by reason of the attachment of the rights of that Company.

Q. Intending to leave it for judicial determination whether lost before or after July 2, 1864? A. Yes, sir.

Q. Mr. Marvin, have you prepared tabulated statements of the results of your investigation with reference to these areas and losses within the place and first indemnity limits of the Company in Minnesota. A. I have.

Q. Have you noted upon those tabulations in red ink alongside of your own figures the corresponding figures shown in the adjustment schedules of the Department to which 157 you have referred as being the basis of the Commissioner's report to the Secretary of June 7, 1900?

A. I have.

Q. Were there certain matters with reference to which figurers were not given in the adjustment schedules but concerning which figures are given in your own statement?

A. The adjustment schedules of Division F of the General Land Office did not analyze the losses to the grant within the place limits, as I have done in my adjustment.

Q. Did those schedules discriminate between the losses occurring prior and those occurring subsequent to July 2, 1864?

A. No, sir.

Q. Will you please produce the tabulated statements of your examination to which you refer?

A. I have them before me.

Q. Are they made, Mr. Marvin, from the records of the General Land Office to which you have already referred?

A. Yes, sir.

(The witness produces two tabulated statements, one having reference to the place limits of the Northern Pacific Railroad Company in the State of Minnesota, which is marked "Comlainants' Washington Exhibit No. 1," and another, relating to the first indemnity limits of the said Railroad Company in the State of Minnesota, which is marked "Complainants' Washington Exhibit No. 2.")

Mr. Billson: These two exhibits the complainants offer in evidence. (See pages 356 and 357, this record.)

Mr. Moer: Defendants object to the reception in evidence of complainants' Exhibit No. 1, and defendants likewise object to the reception in evidence of Complainants' Exhibit No. 2, upon the ground that both and each of them are incompetent. Overruled; Defendant excepts.

By Mr. Billson:

158 Q. Referring to these two exhibits, are all the figures which appear thereon those of your own compilation except those which appear in red ink?

A. Yes, sir.

A. Are all these that appear in red ink copies of figures which you have copied from the Government's adjustment schedules, to which you have alluded? A. Yes, sir.

Q. And in each case the Government's red ink figure is placed in juxtaposition to the corresponding figure of your own compilation? A. Yes, sir.

Q. Mr. Marvin, in making these examinations, did you use anything else than the Government records to which you have referred? Did you use to any extent any map of your own?

A. As a guide, I used a blue-print of a map compiled in our office, being a composite map compiled in our office from the certified copies of the maps of withdrawal in the State of Minnesota of our road and of the roads conflicting with our road.

Q. Will you please produce that map?

(The witness produces the blue-print copy of map to which he refers.)

Q. I notice upon this map, Mr. Marvin, figures in red at different points. What do those figures indicate?

A. Those figures indicate the number of the schedules prepaper by the General Land Office and used by me.

Q. These adjustment schedules?

A. These adjustment schedules; and you will notice they are placed within an outlined body showing the body of land included and covered by these adjustment schedules. That map was used by me for all lands lying outside of the conflict with the Lake Superior & Mississippi Road.

Q. Were the Government subdivisions of land, which in your examination treated as within the different limits of the grant to this Company, such as were shown to be included in those limits by the adjustment schedules to which you have referred and by the blue print map which you have produced? A. They were. 159

Q. Is that also true with respect to the lands in the different limits of the Lake Superior & Mississippi and of the St. Paul & Northern Pacific? A. Yes, sir.

Mr. Billson: The blue-print copy of map referred to by the witness is offered in evidence by the complainants in connection with his testimony, for the purpose, among other, of showing that the lines of the several railroad limits as recognized by him in his computations conform to the lines of the several limits as shown by the original diagrams of withdrawal and location. (Exhibit omitted as per stipulation. See page 354, of this record.)

Mr. Moer: Defendants object to the reception in evidence of the said blue-print on the ground that it is incompetent. Overruled; Defendant excepts.

(The blue-print referred to is marked "Complainants' Washington Exhibit No. 3".)

Mr. Moer: We have no objection to the map as a map, if it is correct. We would raise the same objection as to its competency if the original were produced.

By Mr. Billson:

Q. Mr. Marvin, have you prepared a recapitulation, in concise form, of the results shown in the tabulated statements numbered 1 and 2 which have already been offered in evidence?

A. I have.

(The witness produces the recapitulation to which he refers, and it is marked "Complainants' Washington Exhibit No. 4", and offered in evidence by complainants.) (See page 359 this record).

Mr. Moer: Objected to as being incompetent; but the defendants have no objection to the reception of the same in evidence if the Court rules that the evidence heretofore offered by the witness in relation to the grant is competent; subject only to examination as to its correctness to conform to his own figures.

160 By Mr. Billson:

Q. Is this Exhibit numbered 4, Mr. Marvin, a correct statement of the results of your examination of the Department records, subject to the explanation which you have made respecting the lands lost in favor of the Lake Superior & Mississippi Railroad Company within their 10-20 mile limits?

A. Yes, sir; it is.

Q. Referring to your tabulated statements respecting the areas and losses within the place limits of the Northern Pacific Railroad Company, will you please explain such discrepancies as exist between your figures and those of the Department, as the same appear on your statements in red ink?

A. You wish this in detail and not by totals?

Mr. Moer: We have no objection to a general statement of what the reasons for the discrepancies are.

A. I take them up in detail, referring to the different schedules in the manner in which they were marked and indicated by the Department in the preparation of them.

Q. Let me ask you right there whether the numbers given on the left hand margin of your tabulations refer to the numbers of the different adjustment schedules of the Department to which you have already referred?

A. Yes, sir. The first discrepancy is in adjustment sheet marked "A special, clear, Northern Pacific 20-mile, east of terminal." The total area and total losses agree. The Department have an item in the vacant column of 761.68 acres, which I have placed in the column marked "Listed by the Northern Pacific properly," the same being shown on the tract-books of the General Land Office as having been listed by the Company.

Q. Do you know of any circumstances which explains this discrepancy between your statement and that of the Government?

A. The reason the Government included these 761.68 acres under the vacant column was because, according to the 161 tract-books at the time they compiled their adjustment, it was in fact vacant of record.

Q. Owing to what?

A. Owing to the cancellation of the Northern Pacific Railroad Company's listing east of the Duluth terminal, as established by the Secretary.

Mr. Moer: This answer is objected to on the ground that it is incompetent, and counsel for defendants move to strike it out.

Motion overruled; defendant excepts.

By Mr. Billson:

Q. Has the list or selection of the Northern Pacific since then been reinstated by the Department? Question withdrawn.

A. It was. Answer stricken out.

Mr. Moer: That is also objected to as incompetent.

Overruled.

Q. Now pass on, Mr. Marvin?

A. In the same adjustment schedule, the Department has shown 5,326.76 acres of land under a heading of "Disposed of subsequent to the definite location of the Northern Pacific." I have treated this figure as covering lands which are now pending in contest between the claimants and the Company, and have therefore placed the figure in a column designated as "Pending".

Q. Has this last mentioned discrepancy any bearing upon the deficiency in the grant?

A. None whatever, as I have in my statement included all pending lands as ultimately enuring to the Company—charging them against the Company.

In schedule marked "No. 1, clear, N. P. 20-mile, 4th principal meridian", I found an error upon the part of the Department in giving the acreage of Section 5, 46 N., 26 W., of the 4th principal meridian, as 229.15 acres. It should have been 329.15 acres. I have added the difference to the total area column and also the column known as "Properly patented to the Northern Pacific."

In schedule No. 6, "L. S. & M., 30 mile, N. P., 20-mile West of Thompson Junction", I found an item in the departmental schedule of 600 acres placed under the column of vacant,
162 which I have placed in the column of "Losses by reason
of swamp, private entry, etc., prior to July 2, 1864," the same having been lost by reason of a swamp location approved July 16, 1891.

Q. Has this last discrepancy to which you refer any bearing upon the magnitude of the deficiency?

A. Yes, sir; it increases the losses within the place limits by 600 acres.

In schedule No. 8, "St. Paul & Northern Pacific 15 miles and Northern Pacific 20 miles, 4th and 5th principal meridians, the Department have a figure of 10,515.89 acres under a column of "Selected lands not subject to the grant," listed lands which I have designated as erroneously listed by Northern Pacific. This figure I have placed in the column of "Lands lost to the grant," they all having been approved for the benefit of the St. Paul & Northern Pacific, and therefore lost.

There is also in this same schedule an item placed by the Department under the head of "Pending" of 4,083.96 acres, which I have placed in the column of "Lost to the grant" prior to July 2, 1864." These tracts were tracts involved in the contests between adverse claimants and the St. Paul & Northern Pacific and the Northern Pacific, and which have, since the compiling of the General Land Office schedules been finally decided by the Department adversely to the Northern Pacific and the claimants, and in favor of the St. Paul & Northern Pacific.

Mr. Moer: All of the evidence of this witness in relation to the items, where it appears by the records of the Land Department, or any conclusions stated by him in any way are objected to as incompetent. Objection overruled; Defendant excepts.

By Mr. Billson:

Q. Referring, Mr. Marvin, to the item of 10,515.89 acres, have those lands been finally disposed of by the Government in any way, and if so, to whom?

Mr. Hoyt: Objected to as incompetent. Overruled; Defendant excepts.

163 A. They have been disposed of to the St. Paul & Northern Pacific.

Q. What is the effect of these two changes which you have made in schedule numbered 8?

A. They go to increase the deficiency of the Northern Pacific in the State of Minnesota.

Q. To what extent?

A. To the extent of the acreage, to wit, 10,515.89 acres, plus 4,083.96 acres.

Referring again to schedule 8, the department have given the area of section 9, 131 N., Range 131 W., 5th principal meridian, as 633.57 acres, which according to the records should be 663.57 acres, the 30 acres I have deducted from the total area and also from the loss column. The Department failed to include the northwest quarter of the southwest quarter of section 1, township 132 N., of Range 32 W. of the 5th principal meridian, having omitted it from the schedule entirely. The acreage being 40 acres, I have added to the total area column 40 acres, and added also 40 acres to the loss column, the tract being approved "Swamp Land."

The net effect of these two changes would be to increase the total area 10 acres, and to increase the total loss 10 acres.

A recess was taken at this point until 2 o'clock p. m.

After recess.

Earl L. Marvin, the witness under examination before the recess was taken, was recalled, and his direct-examination continued.

The Witness: There is just one remark I wish to make. In the examination this morning I was asked a question as to how many acres have been lost within the first indemnity limits of the Northern Pacific Railroad Company in the State of Minnesota prior to the date of definite location opposite thereto. I believe the question was to that effect; and I stated that there had been 1,037,086.19 acres disposed of.

164 I wish to modify my answer, in that I meant that there had been that acreage disposed of within those limits, regardless of the date of definite location, whether prior or subsequent.

By Mr. Billson:

Q. Disposed of otherwise than by—

A. Otherwise than by approval of or selection by the Northern Pacific.

By Mr. Hoyt:

Q. You mean, then, without any regard to the definite location?

A. Without regard to the date. The previous question had been as to the date.

Mr. Billson: Now you may proceed, Mr. Marvin.

The witness then resumed his explanation of differences between his figures and those of the Government, as noted in Complainants' Washington Exhibit No. 1.)

The Witness: "Schedule No. 9 Clear, Northern Pacific 20-miles, within the Fifth Principal Meridian." The Department has shown in its column of "Pending," an item of 46,779.93 acres I have found that 45,000 acres of that item are lands patented to the Northern Pacific, and have therefore added them to the column of "Properly Patented to the Northern Pacific."

By Mr. Billson:

Q. What effect, if any, does that have upon the amount of the deficiency?

A. That has no effect on the question of deficiency.

Q. For what reason?

A. For the reason that the Departmental figure of 45,000 acres in the "Pending" column was charged against the Northern Pacific.

Q. Now you may proceed, as soon as you are ready Mr. Marvin?

A. The Department has shown Section 1 of Township 135 North, Range 30 West, Fifth Principal Meridian, as containing 444.24 acres. According to the records of the General Land Office, this should be 644.24 acres. The difference of 200 acres I have added to the total area, and also the column "Properly Patented to the Northern Pacific."

165 The Department has shown the area of Section 5 of Township 135 North, Range 32 West, Fifth Principal Meridian, as containing 554.48 acres. I find, according to the records of the General Land Office, that it should be 654.48 acres. The 100-acre difference I have added to the total area, and also the column of "Properly Patented to the Northern Pacific."

Q. What is the effect of those last two changes?

A. Their effect is to increase the total area within the limits.

Q. And, consequently, to increase the deficiency to that extent? A. No; it does not increase the deficiency.

Q. But as the area increases the deficiency increases, does it not?

A. It does not affect the deficiency, as it is added to the total area and also to the "Properly Patented" column, one off-setting the other.

The Department has shown the area of the east half of the northeast quarter of Section 1, Township 134 North of Range 39 West, Fifth Principal Meridian, as 47.94 acres. I have found the area to be 79.94 acres. The difference, 32 acres, I have added to the total area column, and also to the column, "Properly Patented to the Northern Pacific."

Q. That discrepancy has no effect on the amount of the deficiency? A. No; one offsets the other.

The Department has shown the areas of Lots 3, 4, 5, 6 and 7, in the southwest quarter of the northwest quarter and the northwest quarter of the southwest quarter of Section 5, Township 136 North of Range 40 West of the Fifth Principal Meridian to be 156.65 acres. I have found it, from the records of the General Land Office, to be 265.65 acres. The difference of
109 acres I have added to the "Total Area" and also to
166 the "Total Lost" column—the land having been covered
by cash-entry No. 626, made April 10th, 1870.

Q. The effect of that change being to increase the deficiency? A. To increase the deficiency.

"Schedule No. 10. St. Vincent Extension. St. Paul, Minneapolis & Manitoba, 20-miles; Northern Pacific, 20 miles."

The Department has shown the area of Section 7, Township 137 North of Range 42 West of the Fifth Principal Meridian as 198.40 acres. It should be 189.40 acres, according to the records of the General Land Office. The difference I have subtracted from the "Total Area," and also subtracted from the column of "Properly Patented to the Northern Pacific."

The Department has failed to show or include within its Schedule No. 10 the whole of Section 7, Township 136 North of Range 47 West of the Fifth Principal Meridian, containing 606.21 acres. I have added to the column of "Total Area" 606.21 acres, and also the same amount to the column of "Properly Patented to the Northern Pacific."

"Schedule No. 11. St. Vincent Extension. St. Paul, Minneapolis & Manitoba, 10 miles; Northern Pacific, 20 miles.

The Department has shown 4,777.63 acres under the heading of "Pending." Of this amount I have placed under the column of "Property patented to the Northern Pacific" 4,256.11 acres.

Q. Does that change have any effect on the extent of the deficiency? A. None.

That completes my remarks as to the place adjustment schedules.

(The witness then referred to Washington Exhibit No. 2, being the tabulated statement with reference to the lands included in the first indemnity limits.)

The Witness: Schedule marked "A Special, Clear; Northern Pacific 30 miles, East of Duluth Terminal."

The Department has shown under the column of "Vacant," an item of 7,122.51 acres. Of this item I have placed under the column headed "Northern Pacific Selections Unpatented" 7,002.17 acres, which the records of the General Land
167 Office show to have been selected by the Northern Pacific Company.

By Mr. Billson:

Q. How do you explain that?

A. At the time the Department compiled its schedule "A Special," the tract-books indicated that those lands were vacant, by reason of the cancellation of the Northern Pacific Selection. At the time of my examination, the Northern Pacific selections had been reinstated of record.

Mr. Moer: This is all objected to as incompetent.

By Mr. Billson:

Q. Those are lands lying east of the terminal as established at one time at Duluth, are they, Mr. Marvin?

A. Yes, sir. The name of the schedule indicates that they are within the Northern Pacific 30-miles limits clear, lying east of the Duluth Terminal.

Q. What is the effect upon the deficiency of that alteration?

A. It tends to increase the deficiency to that extent.

The Department has shown, under the column headed "Area Disposed of," an item of 75,657.11 acres. Of this I have placed in the column of "Pending," 8,951.60 acres, the same being in contest between the company and adverse claimants, according to the records of the General Land Office.

"Schedule No. 4 Clear; Northern Pacific, 30 Miles; Fourth Principal Meridian."

The Department shows Lot 2 of Section 7, Township 53 North, Range 18 West of the Fourth Principal Meridian as being in the "Pending" column. I have deducted the area, 40 acres, from the "Pending" column, and added it to the column, "Properly Approved to the Northern Pacific."

The Department has shown tracts in Section 15, Township 52 North Range 23 West of the Fourth Principal Meridian as containing 583.85 acres. I have found, according to the records of the General Land Office, that the said tracts con-
168 tain 565.10 acres. The difference of 18.75 acres I have
deducted from the "Total area" column and also from the column of "Properly Approved to the Northern Pacific."

The Department has shown the area of Lot 1 of Section 1, Township 42 North, Range 26 West of the Fourth Principal Meridian to be 97.20 acres. I find the area to be, according to the records of the General Land Office, 4.70 acres. The difference of 92.50 acres I have deducted from the total area, and also from the area under the heading of "Area Disposed of."

The Department has shown the tract known as the southwest quarter of the northeast quarter of Section 25, Township 42 North of Range 26 West of the Fourth Principal Meridian, containing 40 acres, to be vacant. The same I have deducted.

Q. For what reason?

A. The tract in question being within the limits of the Mille Lac Reserve.

The Department has shown the northwest quarter of the northeast quarter of Section 29, Township 42 North, Range 26 West of the Fourth Principal Meridian, containing 40 acres, to be cavant. I have deducted the area from the "Vacant" column, and added it to that of "Area Disposed of;" the tract in question being within the Mille Lac Reserve.

"Schedule 6. St. Paul & Northern Pacific, 15 miles; Northern Pacific, 30 Miles; Fourth Principal Meridian."

The Department has shown, under the heading of "Pending in Contest," an area of 1,181.52 acres, which I have placed in the column of "Area Disposed of"—the contest covering the same having been closed adversely to the Northern Pacific, and in favor of the St. Paul & Northern Pacific.

The Department shows the area of the north half of the northeast quarter and the north half of the northwest quarter and the southwest quarter of the southwest quarter of Section 9, Township 40 North, Range 31 West of the Fourth Principal Meridian as 200 acres. I find the area to be 139.52
169 acres, according to the records of the General Land
Office. The difference of 60.40 acres I have deducted from the total area, and also from the column of "Area Disposed of."

The Department shows the area of the north half of the Northeast quarter and the north half of the northwest quarter of Section 11, Township 40 North, Range 31 West of the Fourth Principal Meridian, to be 160 acres. I find the area to be 99.66 acres, according to the records of the General Land Office.

The difference of 60.34 acres I have deducted from the column of "Total Area," and also from the column of "Area Disposed of."

"Schedule No. 9. Clear; Northern Pacific, 30 Miles; Fifth Principal Meridian."

The Department has failed to include in its schedule the southwest quarter of Section 7, Township 144 North of Range 41 west, containing 169.35 acres. This area I have added to the "Total Area" column, and also to the column of "Area Disposed of"—the tract being within the White Earth Indian Reservation.

The Department has shown the area of Section 1, Township 144 North of Range 44 West of the Fifth Principal Meridian to be 636.55 acres. I find it to be 663.55 acres, according to the records of the General Land Office. The difference of 27 acres I have added to the column of "Total Area," and also to the column of "Properly Approved to the Northern Pacific."

"Schedule No. 10. St. Paul & Northern Pacific, Six, Ten and Fifteen miles, Fifth Principal Meridian; Northern Pacific, Thirty Miles."

The Department has included in this schedule the south half of the southeast quarter of Section 19, Township 130 North of Range 29 West of the Fifth Principal Meridian, containing 80 acres; and also Lot 4 of Section 21, Township 130 North of Range 29 West, containing 40.02 acres, which were included in the schedules of Northern Pacific place adjustment. The acreage, 120.02 acres, I have deducted from the "Total Area" column, and also from the column of "Area Disposed of."

170 The Department has shown the southeast quarter of the northwest quarter of Section 33, Township 129 North of Range 31 West of the Fifth Principal Meridian, containing 40 acres, to be vacant. I have deducted the area, 40 acres, from the "Vacant" column, and placed it in the column of "Disposed of by reason of Entry."

The Department has shown, in the column of "Pending in Contest," an acreage of 1,293.12 acres, which I have placed in the column of "Area Disposed of"—the contest covering the same having been closed adversely to the Northern Pacific, and in favor of the St. Paul & Northern Pacific.

"Schedule No. 11. St. Paul & Northern Pacific, 20 Miles; Northern Pacific, 30 Miles. Fifth Principal Meridian."

The Department has shown the southeast quarter of the northwest quarter of Section 33, Township 129 North of Range 31 West, containing 40 acres, as vacant. I have deducted the area, 40 acres, from the "Vacant" column, and added to the column of "Area Disposed of"—the tract having been entered and lost to the Northern Pacific.

"Schedule No. 12. St. Vincent Extension. St. Paul, Minneapolis & Manitoba; Northern Pacific, 30 Miles."

The Department has shown, under the column of "Pending in Contest," an area of 102,605.86 acres. Of this acreage I have added to the column of "Area Disposed of," 87,627.43 acres; these tracts having all been patented either to the St. Paul, Minneapolis & Manitoba under their grant, or to the State under the swamp or state selections. At the time the Department made their adjustment, the tracts were shown as pending in contest. At the time I made my examination, the tract-books had been noted closing the cases adversely to the Northern Pacific.

Q. Mr. Marvin, did the transfer of the 87,000 acres from the column of "Pending in Contest" to that of "Lands Disposed of" affect the question of deficiency?

A. It increased the deficiency by that amount.

Q. Is that correct? A. Correct.

171 Q. I thought the Government had charged against the Company all lands involved in pending cases?

A. True, they charged them against the Company; but when they are placed in the area disposed of they are not charged against the Company. Those lands are lost to the Company.

The Department has shown the west half of the southwest quarter of Section 23, Township 129 North of Range 35 West of the Fifth Principal Meridian, containing 80 acres, to be vacant. I have deducted 80 acres from the "Vacant" column, and added to the column of "Properly Approved to the Northern Pacific," the same being patented to the Northern Pacific.

The Department has shown Lot 4 in the northwest quarter of the southwest quarter of Section 29, Township 133 North of Range 40 West of the Fifth Principal Meridian, containing 66.90 acres, to be pending in contest. I have deducted this area, 66.90 acres, from the "Pending" column, and added the same to the column of "Properly Approved to the Northern Pacific," the tracts having been patented to the Northern Pacific Road.

The Department shows the northwest quarter of the northeast quarter of Lots 1 and 2 of Section 31, Township 133 North of Range 40 West of the Fifth Principal Meridian, containing 124.25 acres, to be "Pending in Contest." I have deducted the area, 124.25 acres, from the "Pending" column, and added it to that of "Properly Approved to the Northern Pacific," these tracts having been patented to the Northern Pacific Road.

The Department shows Lot 3 of Section 31, Township 133 North of Range 40 West, Fifth Principal Meridian, containing 1.95 acres, to be "Pending in Contest." I have deducted the area of 1.95 acres from the "pending" column, and added to that of "Properly Approved to the Northern Pacific," the tracts having been patented to the Northern Pacific.

The Department shows Lot 4, the southwest quarter of the northwest quarter and the west half of the southwest quarter of Section 3, Township 144 North of Range 44 West
172 of the Fifth Principal Meridian, containing 163.15 acres, to be "Pending in Contest." I have deducted the area, 163.15 acres, from the "Pending" column, and added to that of "Properly Approved to the Northern Pacific," the tracts having been patented to the Northern Pacific.

I have deducted 160 acres which the Department shows to be "Pending in Contest" from the "Pending" Column, and added to that of "Properly Approved to the Northern Pacific," the tracts having been patented to the Northern Pacific.

The Department shows Lot 5 of Section 21, Township 130 North of Range 27 West of the Fifth Principal Meridian, containing 43.30 acres, to be "Pending in Contest." I have deducted the area of 43.30 from the "Pending" column, and added to that of "Properly Approved to the Northern Pacific," the tracts having been patented to the Northern Pacific.

The Department shows Lots 6 and 7 of Section 11, Township 131 North of Range 37 West of the Fifth Principal Meridian, containing 51.93 acres, as "Pending." I have deducted the area, 51.93 acres, from the "Pending" column, and added to the column of "Properly Approved to the Northern Pacific," the tracts having been patented to the Northern Pacific.

The Department shows Lot 6 of Section 21, Township 131 North of Range 37 West of the Fifth Principal Meridian, containing 26.75 acres, to be "Pending in Contest." I have deducted the area, 26.75 acres, from the "Pending" column, and added to that of "Properly Approved to the Northern Pacific," the lands having been patented to the Northern Pacific.

The Department has included 160 acres in the "Vacant" column which I have deducted from that column and added to the "Pending" column, the lands involved being in contest.

The Department has shown 160 acres in the "Pending" column which I have deducted from the "Pending" column and added to the column of "Northern Pacific Selections, Unpatented," the tract being free in contest.

173 I have deducted area of 1130.30 acres which the Department has shown in the "Pending" column, and added to the column of "Properly Approved to the Northern Pacific," the tracts having been patented to the Northern Pacific.

"Schedule 13. St. Vincent Extension. St. Paul, Minneapolis & Manitoba, 10 Miles; Northern Pacific, 30 Miles."

The Department has placed under the column of "Pending in Contest," an item of 228,732.75 acres. Of this acreage I have deducted 101,931.13 acres from the "Pending" column, and added to the column of "Area Disposed of;" the tracts going to make up this area of 101,931.13 acres having all been patented to the St. Paul, Minneapolis & Manitoba Railroad Company, under its grant, or approved to the State of Minnesota as swamp.

Q. And what is the effect of that change?

A. The effect of that change is to increase the deficiency in the State of Minnesota to the extent of the acreage.

Q. When you refer to approval to the St. Paul, Minneapolis & Manitoba Company, what do you mean?

A. I mean lands approved to the State of Minnesota for the benefit of that road. At the time the Department compiled this schedule, the tract-books indicated that this item of 113,809.89 acres was "Pending in Contest." At the time I made my examination, this contest had been closed on the tract-book adversely to the Northern Pacific.

The Department has shown the northwest quarter [and] the northwest quarter of the southeast quarter of Section 11, Township 133 North of Range 42 West of the Fifth Principal Meridian, containing 200 acres, to be "Pending in Contest." I have deducted the area, 200 acres, from the "Pending" column, and added to the column of "Northern Pacific Selections Unpatented."

The Department has shown the west half of the southwest quarter of Section 33, Township 134, North of Range 42 West, containing 80 acres, to be vacant. I have deducted 80 acres from the column "Vacant," and added to the column
174 "Northern Pacific Selections Unpatented."

Q. For what reason were those last two changes made?

A. For the reason that the tract-books show them to be clear of contest, and to be covered by a selection made by the Northern Pacific Railroad.

The Department has shown the southeast quarter of the northeast quarter of Lot 1 of Sections 35, Township 134 North of Range 42 West, containing 76.65 acres, to be "Pending in Contest." I have deducted the acreage, 76.65 acres, from the "Pending" column, and added to that of "Properly Approved to the Northern Pacific," the tracts having been patented to the Northern Pacific.

The Department has shown Lot 1 of the northeast quarter of the northeast quarter of Section 9, Township 134 North of Range 43 West of the Fifth Principal Meridian, containing 74.70 acres, to be "Pending in Contest." I have subtracted the area 74.70 acres, from the "Pending" column, and added to the column of "Properly Approved to the Northern Pacific," the same having been patented to the Northern Pacific.

The Department has shown the southwest quarter of the northwest quarter of Section 3, Township 135 North of Range 43 West of the Fifth Principal Meridian, containing 40 acres, to be "Pending in Contest." I have subtracted the area, 40 acres, from the "Pending" column, and added to that of "Properly Approved to the Northern Pacific;" the tract having been patented to the Northern Pacific.

The Department has shown Lots 5 and 6 of Section 5, Township 135 North of Range 43 West of the Fifth Principal Meridian, containing 59.90 acres, to be vacant. I have deducted the area, 59.90 acres, from the "Vacant" column, and added to that of "Area Disposed of," the tracts being lost.

The Department has shown Lots 11 and 12 of Section 5, Township 135 North of Range 43 West of the Fifth Principal Meridian, containing 59.75 acres, to be vacant. I have subtracted the area, 59.75 acres, from the "Vacant" column,
175 and added to that of "Area Disposed of," the tracts having been covered by an entry and lost.

The Department has shown Lot 1 in the northeast quarter of the northwest quarter of Section 17, Township 135 North of Range 43 West, containing 82.70 acres, to be vacant. I have deducted the area, 82.70 acres, from the "Vacant" column, and added to that of "Area Disposed of," the tracts being lost.

The Department has shown Lots 1, 2, 3, and 4 of Section 31, Township 135 North of Range 43 West, containing 139.36 acres, to be "Pending." I have deducted the area, 139.36 acres, from the "Pending" column, and added to that of "Northern Pacific Selections Unpatented," the tracts being clear of contest, and having been selected by the Northern Pacific.

The Department has shown the northeast quarter of the southwest quarter of Section 1, Township 135, of Range 44 West of the Fifth Principal Meridian, containing 40 acres, to be vacant. I have deducted the acreage, 40 acres, from the "Vacant" column, and added to the column of "Northern Pacific Selections Unpatented."

The Department has failed to include in their schedule Lot 1 of Section 23, Township 143 North of Range 49 West, containing 20.65 acres. I have added the area, 20.65 acres, to the column of "Total Area," and also to the column of "Area Disposed of."

That completes my remarks.

Q. Does that complete your explanation of the differences between your statement and those of the Department?

A. Yes, sir.

Q. Mr. Marvin, in view of your testimony with reference to your experience for a number of years past in examining records of the Local Land Offices, I would like to ask you if you know what is the custom at the Land Offices of the United States to which you have referred as within your knowledge, with reference to the keeping of records known as tract-books?

A. I do.

Q. What is the custom in that regard?

176 A. It is the custom of the local offices to post the tract-books, and show all entries, filings and disposals of the public domain which are made through them.

Q. Do you know any forms of dispositions of public lands which are not thus entered upon the local tract-books?

A. No; I know of no forms of dispositions which are made through the local offices.

Q. What dispositions, if any, are made otherwise than through the local offices, if you can tell us?

A. I suppose reservations made for the benefit of Indians and military purposes are hardly made through the local offices.

Q. Are they or are they not posted on the local tract-books?

A. The tract-books usually show at the head of each township the fact that the township is included in a reservation, or anything of that nature, where it is made in that manner.

Q. Mr. Marvin, did you find in the General Land Office of the United States, at Washington, any record showing the lands which had been assigned by the Northern Pacific as losses, and used as bases for selection of lands in Minnesota?

A. I did, to a certain extent.

Q. To what extent?

Mr. Moer: That is objected to as incompetent. The fact that he found such a record is not objected to; but the objection is that it is incompetent to show by this witness what the record contains.

Overruled; Defendant excepts.

A. I found a record in Division F of the General Land Office which shows the losses which have been used as the basis for approved selections made by the Northern Pacific Railroad Company.

Q. In what form was the record kept?

A. The record is composed of township plats, numbered to correspond with the town in which the loss lies, and showing by the number upon the particular tract which has been used as the clear-list in which that loss was used.

177 Q. What do you mean by a "clear-list"?

A. By a clear-list, I mean a list of lands selected, together with the losses assigned for the selections which have been examined by the Department for approval for patents.

Q. And reported or reported for approval?

A. And reported to the Secretary for approval for patent.

Q. Did you check up and compare, Mr. Marvin, the losses assigned as basis for selection in the Duluth selection-lists of the Northern Pacific Railroad Company, numbered respectively 10, 15, 15-a, 15-b, and 16? A. I did.

Q. Can you state whether any of the losses assigned as bases for selection in any of those lists had been previously used for selections, according to the records to which you have referred?

Mr. Moer: That is objected to as incompetent. The records themselves show the fact. Overruled; Defendant excepts.

A. I found that none of the losses assigned as bases for the selection of any of the tracts in any of the lists enumerated had been used as a basis, so far as disclosed by those records. I might add to that that none of the losses had been used as a basis which were set opposite any of the lands involved in this suit.

Q. Mr. Marvin, I call your attention to certain records (which although not yet in evidence, we expect to put in evidence, I may say, for the information of counsel), consisting of a certain statement marked "F," attached to a letter of the Commissioner of the General Land Office addressed to the Secretary of the Interior, under date of May 3rd, 1900, and relating to the second indemnity lands and selections of the Northern Pacific Railroad Company in Minnesota. I will ask you whether you have examined the statement referred to in the said Exhibit F, with reference to an item of 50,752.58 acres of land which by the said statement F are described as having been approved to the Lake Superior & Mississippi Railroad Company, but as being a part of the Northern Pacific grant? A. I have examined it.

178 Q. Did the statement which you examined show the discriptions of those lands in detail? A. Yes, sir.

Q. Where are those lands located with reference to the line of definite location of the Lake Superior & Mississippi Railroad?

Mr. Hoyt: We object to that as being incompetent. Overruled; Defendant excepts.

A. I found, upon comparing that portion of the statement embracing the 50,000 acres with the withdrawal-maps as used by Division F of the General Land Office, that all the lands embraced and going to make up this amount of 50,752.58 acres lie within the 10-20 mile of first indemnity limits of the Lake Superior & Mississippi Road.

Q. You mean, Mr. Marvin, that they lie between ten and 20 miles distant from the line of definite location of the Lake Superior & Mississippi Road? A. Yes, sir.

Q. Do any of them lie within the 20-30 mile limit of the grant of that Company? A. No, sir.

Q. In the statements referred to, has the Commissioner allowed to the Northern Pacific Railroad Company as losses on account of which second indemnity selections might be made, any lands whatever of any kind which inured to the Lake Superior & Mississippi Railroad Company, either within their place limits or any of their indemnity limits?

Mr. Moer: Objected to as incompetent. The statement shows for tself.

A. No, sir; he has not.

Mr. Billson: The complainants have completed the examination of this witness on their part, and hereby offer to allow such time, if any, as may be desired by counsel for the defend-
ants for examination of the records which have been
179 referred to by the witness, or other records of the Gen-
eral Land Office; and offer to produce for the inspection of counsel, at the General Land office, any of these records; consenting either that the cross-examination of the witness may be deferred until such examination shall have been made, or offering to reproduce the witness at any time, either here or at Duluth, for the purpose of further cross-examination, in case it should not be desired to continue the cross-examination at this time.

Mr. Moer: The offer on the part of the solicitor for the complainants is accepted on the part of the attorneys for the defendants, with this modification: We desire at this time to cross-examine Mr. Marvin as to a few matters, with the privilege of thereafter looking over the various exhibits and records and copies for further cross-examination, either at St. Paul or Duluth, as suits the mutual convenience of counsel.

Cross-Examination

By Mr. Moer:

Q. Mr. Marvin, when did you first start in on the work of preparing the lists which have been offered in evidence, marked "Washington Exhibits 1 and 2?"

A. Do you mean the actual detail-work?

Q. Yes, when did you first start at it?

A. I started in December, on my first trip down here.

Q. December, 1900? A. December, 1900.

Q. And how long did you work in December, 1900?

A. About two weeks.

Q. Did you have at that time any assistance?

A. None whatever.

Q. Then when did you renew your work?

A. I renewed my work on December 26th, 1900.

Q. How long did you continue it?

A. I continued it up until yesterday morning.

Q. [Do] that you have, substantially, put six weeks or thereabout into this work?

180 A. It is very nearly seven weeks.

Q. And during what portion of that time had you the assistance of any person or persons?

[Q.] From December 26th up to yesterday I had an assistant.

Q. Whom you have referred to heretofore?

A. Whom I have referred to heretofore.

Q. About how many hours daily did you work, Mr. Marvin?

A. We were permitted to work in the General Land Office for five hours daily.

Q. Did you, after your work in the office, make data and memoranda outside the office?

A. I made no memoranda outside of the office. I made all my memoranda during the time of my examination, and compiled my figures in hours outside of the Department.

Q. These investigations of the lands in place (using that term to express the original grant) involved the examination of all the odd-numbered sections of the entire grant in the State of Minnesota? A. Yes, sir.

Q. That amounted to 2,866,409 acres, did it, substantially?

A. Yes, sir.

Q. You also, in the course of that examination, went over what is known as the first indemnity limits? A. Yes, sir.

Q. Of the company in Minnesota?

A. Of the company in Minnesota.

Q. To what extent, if any, did you examine the second indemnity? A. None whatever.

Q. The total area in acres that it was necessary for you to examine to determine the facts in regard to which you have testified would be in the neighborhood of four millions of acres, or perhaps more, would it not?

181 A. Well, it would be the sum of the total acreage of the odd-numbered sections of the place limits, and the odd sections of the first indemnity limits.

Q. Which would be more than four millions?

A. Somewhat over that.

Q. About how many descriptions would be embraced in that?

A. Well, that is pretty hard to answer. A section might be described as a whole.

Q. Or subdivided.

A. Or subdivided, as the case might be, down to the lowest Government subdivision.

Q. So that in your judgment, what would they average? You have looked them over. Would they average 320 acres, or 160?

A. It is pretty hard to say. You might say, though, that they would average 320 acres.

Q. So there were several thousands of descriptions?

A. Yes, sir. That could be determined by computing the number of descriptions given in the adjustment-sheets.

Q. Now, in the investigation of this matter which you have carried on, at whose solicitation or employment did you do it?

A. I am under the employ of the Northern Pacific Railway Company.

Q. Were you instructed by the Northern Pacific people to investigate this matter?

A. I made the investigation in order to determine whether the Department's adjustment would agree with the adjustment as we had made it of the same tracts.

Q. You misapprehend my question, Mr. Marvin. I did not ask you that. I ask you for whom you did it?

A. In whose employ?

Q. Yes?

A. Well, necessarily that of the Northern Pacific Railway Company?

182 Q. And it was under their instructions that you performed this work, or the instructions of the officers of the road? A. Yes, sir.

Q. Your superiors? A. My superiors.

Q. The result of your labors in this matter you have tabulated and set down in Plaintiff's Washington Exhibits Nos. 1 and 2? A. Yes, and you might say in No. 4.

Q. That is the summary? A. Yes; that is the summary.

Q. You have summarized on it these others? A. Yes.

Q. In the testimony which you have given, your evidence has not been from any independent recollection of the fact, except as you have noted it from the memorandum which you have referred to in reference to the matter? A. That is all.

Q. This memorandum that you have was made by whom?

A. By myself, personally.

Q. How did you obtain the data for it?

A. I had, as a basis to work on, the figures as compiled by the General Land Office in their schedules.

Q. Which schedules do you mean?

A. All their schedules.

Q. All of their schedules applying to the lands in Minnesota?

A. All of their schedules applying to the lands in Minnesota. I used their schedules as an index from which to compile my work. As to any changes or omissions, or anything of that sort, which I wished to make, I made memoranda and arrived at my conclusions.

Q. You did not, then, as I understand it, take the tract-books showing the original grant through Minnesota, and make up an independent list through the State of Minnesota as to the original grant, showing what lands, for instance, 183 were lost prior to the definite location of the road; but only as you took it from the schedules of the General Land office?

A. I took the schedules of the General Land Office in connection with the tract-books.

Q. Using the two together?

A. Using the two together. In that way I arrived at the omissions that I noted, and the various changes.

Q. You did your work in the same way as to the first indemnity limits? A. In the same way; yes, sir.

Q. To make it perfectly clear, Mr. Marvin, assuming that you started to investigate the place-limits at the western border of the State of Minnesota, taking any particular township through which the line ran, or where it was definitely located, any land that they were entitled to in place-limits: Would you take the township and go through it, section by section—1, 3, 5, and so on through the township?

A. Right straight through,—

Q. A particular town?

A. A particular town, as in relation to the schedules as compiled.

Q. By the Commissioners? A. By the Commissioners.

Q. Yes?

A. These schedules are compiled in reference to the conflicts between the Northern Pacific and other roads.

Q. And individual claimants; I understand?

A. Well, individual claimants come in, naturally, incidentally. But the boundaries of the lands included in any one schedule represent the boundaries of some conflict or some portion of some conflict; and the total area within that is adjusted in the schedule so designated.

[A.] I see. Is that true of all the schedules?

184 A. That is true of all the schedules except those schedules which they call "clear." They mean, by that

word "clear," a body of land which is not involved in any conflict between the Northern Pacific and some other road.

Q. I understand. Now, as the net result of your computations and examinations, what difference do you make between the Commissioner's Report of June 7th, 1900, and your own?

A. I make a difference in the place-limits in the total area. That is one item.

Q. Of how much?

A. I have not computed it; but it can be arrived at.

Q. Well, can you not give it to me in round numbers? I am not particular as to an acre, if you know generally?

A. A difference of twelve hundred acres in the total area of the place-limits.

Q. And in whose favor, putting it that way? As against the Commissioner, or as against your Company?

A. I make the total area of the lands embraced in the place-limits greater than the Commissioner does.

Q. That is, the railroad company sustained greater losses?

A. Not necessarily.

Q. Not necessarily? A. No, sir.

Q. However, you make the area in the place-limits greater than the Commissioner does? A. Yes, sir.

Q. I understand. By how much, did you say?

A. By the difference between 2,865,262.04 (being the Commissioner's figures) and 2,866,409.25 (being my figures).

Q. Now, then, what difference do you make in the indemnity limits? When I say "indemnity," I mean the first indemnity, to which you have been testifying?

A. Yes, sir. I make a difference as between 1,491,-
185 202.50 acres (being the Commissioner's figures) and
1,491,)67.41, (being my figures).

Q. About what is that difference?

A. Oh, it is about 150 acres.

Q. A small amount? A. A small amount.

Q. What difference do you make in the place-limits as to the lands lost prior to the definite location of the road, as between your figures and those of the Commissioner?

A. The Commissioner's statement does not analyze the losses as to prior and subsequent.

Q. No; that is true. It gives the total? A. Yes, sir.

Q. That is what I mean?

A. As between the total lost figures in the place-limits, the difference would be as between 1,304,292.29 acres (being my figures).

Q. Being a difference of 15,000 acres, or thereabouts?

A. In round numbers?

Q. That is claimed on the part of the Company as losses in excess of that allowed by the Commissioner's schedule?

A. Referring to the 15,000, you mean?

Q. Yes? A. Yes, sir.

Q. That is as I understand it. And how many acres of land did you find had been lost in the place-limits of the Northern Pacific Railroad Company on the south side of the line of definite location?

A. I have made no distinction as to the north side or the south side.

Q. So that you are unable to say how much land was lost to the south of the line of definite location, and give any figures thereon at all? A. I am unable to state.

186 Q. In making up the figures as to which you have testified, is the result that you have summarized in the memoranda marked Exhibits 1 and 2 a matter involving nothing but clerical work; or has it involved, on your part, a judgment and discrimination as to whether or not the Commissioner had made mistakes and errors in his rulings?

A. The differences, as a general thing, can be accounted for by the difference in the date of making the examinations.

Q. And how is that, Mr. Marvin?

A. For instance: I have previously testified that according to the records at the time the Commissioner compiled his schedules, certain tracts were pending in contest. At the time I made my examinations, the tract-books showed those contests to have been closed, therefore changing the disposition of the figures—not changing the total area, or anything of that sort, but merely changing the distribution.

Q. In making those changes to which you now refer, you did not take anything that you found from the record in doing that, did you? A. What do you mean?

Q. Why, there was nothing on the tract-book that indicated anything about it, was there? A. Always?

Q. Always? A. Yes, sir.

Q. So that you then simply summarized the amount that had been lost or gained, either way? A. Yes, sir.

Q. As a matter of figures? A. Yes, sir.

Q. And deducted it and put it in the columns?

A. Yes, sir—by a change in the status, as shown by the tract-book.

187 Q. Yes; I understand. In your examination of these lands in the first indemnity limits, did you find that the Northern Pacific Railroad Company, or its successor in interest, the Northern Pacific Railway Company, had re-

linquished their claims to certain lands in the indemnity limits, so marked on the tract-books? A. Yes, sir.

Q. How large an amount of land?

A. I am not able to state.

Q. You did, however, find such markings? A. Yes, sir.

Q. To any considerable extent? A. Yes.

Q. Would you say 100,000 acres?

A. I would not say. It would be merely a guess.

Q. It would be purely a guess on your part. In making your schedules, while you were working in the Land Office, after Mr. Holzberg came to you, how did you work as between yourselves: Who examined the tract-books, and who made the memoranda? A. I examined the tract-books.

Q. And then how were the memoranda made?

A. The memoranda were made at my dictation by Mr. Holzberg.

Q. Acting, in a manner, as your clerk? A. Yes, sir.

Q. And you presume it to be the fact that he set down what you dictated?

A. Well, I overlooked his work to a certain extent.

Q. You could hardly overlook it to the extent of knowing accurately whether he did it or not? A. No.

Q. But you take that for granted?

A. I take it for granted that what I dictated was set down.

Q. You are unable to say how much of the lands lost were lost prior to July 2nd, 1864, as distinguished from losses prior to the definite location? That is, you cannot divide it, as I understand you? A. I have divided it.

188 Q. I did not so understand. Will you give it to us, please?

A. I will have to give it in detail, to make an aggregate figure.

Mr. Billson: Do you refer to the place- limits?

Mr. Moer: The place-limits.

The Witness: Three figures will make the total of the losses prior to July 2nd. Lake Superior & Mississippi, 10-mile limits, 153,332.81. St. Paul & Northern Pacific, 15-mile limits, 153,332.81. St. Paul & Northern Pacific, 15-mile limits, 166,445.64. State swamp selection, private entries, and other locations prior to July 2nd, 1864, 120.23. The sum of those would represent the total losses prior to July 2nd, 1864.

Q. Now, did you divide the lands in the indemnity limits, showing when they had been selected, whether prior to the locations or not? A. No, sir.

Q. Those are not divided? A. No, sir.

Q. You simply have the aggregate loss?

A. The aggregate, total loss, or the total disposed of, as they say.

Q. Yes; that is right. Again as to the method in which you examined the losses in the original limits or place lands: Did you examine each section? A. Yes, sir.

Q. Section by section, from one end of the line to the other?

A. Not section by section; but section by section as to all entries and anything relating to the section as shown by the tract-book.

Q. Without regard to the schedule of the Commissioner?

A. Without regard to the schedule of the Commissioner.

Q. That is, going to the original books?

A. I used the schedule simply as a guide to me.

189 Q. Why did you need that as a guide at all?

A. Because it saved me the clerical work. If it was there, and there correctly, I checked it.

Q. And that is the way you operated? A. Yes, sir.

Q. So that that was the way you operated, using the two together—the tract-book and the schedule?

A. The tract-book and the schedule, at the same time.

Q. How many townships, Mr. Hoyt, should you guess?

A. That could possibly be arrived at by mathematical computation; they could be counted on that map.

Redirect Examination

By Mr. Billson:

Q. Mr. Marvin, referring to the matter of your employment and compensation, and so on, for your work, I would like to ask you who has paid your expenses during the period you have been engaged in this examination?

A. My expenses on this examination have been paid, or will be paid, by the complainants.

Q. They are paid by checks of our firm, are they? Billson, Congdon & Dickinson, attorneys for the complainants?

A. Yes, sir.

Q. Now, Mr. Marvin, have you in your possession, so that they could be submitted, if desired, to the inspection of counsel for the defendants, the original memoranda or data which you compiled in the progress of your examinations, and from which you have more recently prepared these tabulated statements numbered 1 and 2? A. Yes, sir; I have them.

Mr. Billson: We offer them at any time, either now or subsequently, for the examination of counsel, if desired.

Mr. Moer: We can have them at the time we examine him further, if we desire?

Mr. Billson: Yes; certainly.

Mr. Moer: All right.

EARL L. MARVIN.

190 Subscribed and sworn to before this 25th day of January, A. D. 1901.

[Notarial Seal] E. L. WHITE,
Notary Public for District of Columbia.

Barend Holzberg, a witness of lawful age, called by and on behalf of the complainants, having been first duly sworn, testified as follows:

By Mr. Billson:

Q. Mr. Holzberg, what is your name, please?

A. Barend Holzberg.

Q. And your age? A. Twenty-one.

Q. Your place of residence, Mr. Holzberg?

A. This city—Washington, D. C.

Q. And your occupation? A. Clerk.

Q. Are you a stenographer?

A. To a certain extent; yes, sir.

Q. Did you assist Mr. Marvin, the last witness, in his examination of the records in the General Land Office of the United States, as described by him? A. Yes, sir.

Q. What part did you take in that examination, Mr. Holzberg?

A. I called off the descriptions and the disposition of them from the indemnity-sheets of the General Land Office.

Q. The papers that he has referred to as the adjustment sheets?

A. Yes; the adjustment-sheets, the place and the first indemnity limits.

Q. Did you read to Mr. Marvin all of the adjustment-sheets called for by him? A. Yes, sir; I did.

191 Q. Did you read them accurately? A. Yes, sir.

Q. What if anything else did you do, besides reading these adjustment-sheets?

A. I took such notes as Mr. Marvin called to me.

Q. Did you take down accurately and transcribe accurately the matter he gave you to put down? A. Yes, sir.

Q. And after being transcribed, did you turn it over to Mr. Marvin?

A. Yes; I turned over the transcription to him.

Q. How frequently, or at what intervals, did you turn over these transcribed minutes to Mr. Marvin?

A. Well, we had some notes every day, and I generally turned them in at the hotel in the evening.

Q. Of the same day? A. Yes; of the same day.

Cross-Examination

By Mr. Moer:

Q. You say you are a stenographer "to a certain extent." To what extent? A. Well, I do not make a practice of it.

Q. Are you sufficiently familiar with it, though, to be accurate? A. Yes, sir; what I write I can read.

Q. And you think that you have sufficient knowledge of stenography to have made no mistakes in the matter of transcribing what was dictated to you?

A. Yes, sir; I made no mistake in that.

BAREND HOLZBERG.

Subscribed and sworn to before me this twenty-fifth day of January, A. D. 1901.

[Notarial Seal]

E. L. WHITE,
Notary Public, for District of Columbia.

192 (The further taking of these depositions was thereupon adjourned.)

At the taking of the foregoing depositions the following stipulations were entered into between counsel for the respective parties, and ordered to be made a part of this record and returned herewith.

It is stipulated on behalf of the defendants, for whom appearances for the purposes of this examination have been made by Messrs. H. H. Hoyt and S. H. Moer, and by the complainants, that the testimony may be taken down by a stenographer and signed by the witnesses after the same shall have been transcribed by the stenographer, read to the witness and signed by him.

It is also stipulated that any objection to any of the testimony offered, upon the ground of irrelevancy or immateriality, may be made at the final hearing.

(Notarial Seal.)

E. L. WHITE,
Notary Public, For the District of Columbia.

Deposition of Earl L. Marvin, taken on behalf of Complainants, at Washington, D. C., March 26th, 1901, and filed April 18th, 1901.

Examination of Earl L. Marvin, a witness on behalf of the complainants taken at the Pacific Building, Nos. 622-624 "F" Street, Northwest, in the City of Washington, in the District of Columbia, before E. L. White, a Notary Public in and for the District of Columbia, under Sections 863, 864 and 165 of the Revised Statutes of the United States and the 67th Rule in Equity, as amended, pursuant to the notice attached hereto and returned herewith.

Present: William W. Billson, Esquire, of Billson, Congdon and Dickinson, Esquires, and James B. Kerr, Esquire, on behalf of the Complainants; and H. H. Hoyt, Esquire, and S. H.

Moer Esquires on behalf of the defendants for whom they have respectively appeared.

By request of parties, it is ordered that these depositions be taken by question and answer.

Earl L. Marvin, was called as a witness on behalf of the complainants under the stipulation filed herewith, and 193 after having been duly sworn, testified as follows:

By Mr. Billson:

Q. Mr. Marvin, you are the same gentleman who has already testified in this cause to certain examinations made of the records of the Interior Department with reference to the matters in controversy? A. I am.

Q. Have you, since the giving of your former testimony, made an examination of the records of the General Land Office of the United States at Washington, to ascertain the areas of lands in the odd-numbered sections within the 20-30 mile or first indemnity limits of the grant to the Northern Pacific Railroad Company in the State of Minnesota, which, at the date of the Northern Pacific Land Grant Act, July 2, 1864, had been reserved, sold, granted, or otherwise appropriated or become subject to pre-emption or other claims or rights, as shown by the records of the General Land Office? A. I have.

Q. What length of time was occupied in your examination?

A. About five weeks.

Q. What, if any, assistance did you have in making the examination? A. I was assisted by Mr. Barend Holsberg.

Q. To what records of the Land Office did you have recourse in making your examination?

A. To the tract-books and plats.

Q. How did you determine the location of the 20-30 mile limits?

A. I used a blue-print which was made from the map which was used in making the blue-print offered in evidence in connection with my first testimony.

Q. Describe more particularly the map to which you refer, so as to identify it more completely.

A. It was a blue-print of a map which was compiled in the Land Department of the Northern Pacific from the certified copies furnished by the Department of the Interior, show- 194 ing the withdrawals on definite location and general route of the Northern Pacific Land Grant, and also the withdrawals on definite location of the grants conflicting therewith.

Q. You may state the result of the examination to which you have just referred.

Mr. Moer: The defendants object, on the ground that the testimony is incompetent, and not the best evidence of such losses, if any. Overruled; Defendant excepts.

(It is stipulated that upon the hearing of the cause, all objections to any of the testimony of this witness, or exhibits introduced in connection therewith, upon the ground of irrelevancy or immateriality, may be made with like effect as though interposed at the time of the offering of the testimony.)

A. I found that there had been lost in the Northern Pacific first indemnity limits in the State of Minnesota, prior to the date of the grant to said Company, to wit July 2, 1864, an area of 430,903.71 acres; by reason of swamp selections, private entries, and so forth, to the extent of 308,444.93 acres; by reason of conflict with the Lake Superior and Mississippi Railroad Company's ten-mile limit or place limit, 55,447.34 acres; by reason of the conflict with the place limit of the St. Paul and Northern Pacific or Western Railroad's six and ten-mile, 44,598.77 acres; and the reservation known as the Mille Lacs Indian Reservation, to the extent of 22,412.67 acres, all of which items make a total of 430,903.71 acres.

Q. Explain what you mean by "swamp selections".

A. I mean selections made by the State of Minnesota under the grant known as the swamp land grant for the benefit of said State.

Q. In referring to the Lake Superior and Mississippi ten-mile limits, do you mean their limits upon definite location?

A. I mean their place limits on definite location, under their grant of May 5, 1864.

Q. Have you made a similar examination in order to ascertain the quantity of lands in the odd-numbered sections within the 20-30 mile or first indemnity limits of the Northern
195 Pacific grant in the State of Minnesota, which had been reserved, sold granted or appropriated or become subject to pre-emption or other claims or rights between the date of the Northern Pacific grant, July 2, 1864, and the date of the definite location of the line of said road opposite to such land, as shown by the records of the General Land Office?

A. I have.

Q. You may state the results of that examination.

Mr. Moer: Objected to on the part of the defendants as incompetent and not the best evidence. Overruled; Defendant excepts.

A. I found that there have been lost, within the Northern Pacific first indemnity limits in the State of Minnesota, between the date of the grant to the Northern Pacific, to wit: July 2, 1864, and the dates of definite location opposite thereto, 454,026.20 acres, of which 224,808.71 acres were occasioned by reason of private entries, and so forth; 37.710.81 acres by reason of selections made for the benefit of the Lake Superior and Mississippi Railroad within their 20-mile limits; 4,976.54 acres by reason of selections made by the Lake Superior and Mississippi Railroad within their 30-mile limits; 28,840.09 acres by reason of selections made by the St. Paul and Northern Pacific or Western Railroad within its 15- and 20-mile indemnity limits; 41,323.79 acres by reason of the attachment rights of St. Vincent extension of the St. Paul, Minneapolis and Manitoba Railroad Company within its ten-mile or place limits; and 116,366.26 acres by reason of the reservation known as the White Earth Indian Reservation; these figures aggregating 454,026.20 acres, as given above.

Q. Comparing these figures with the total losses in the first indemnity limits, as shown by your former testimony, what was the amount of lands lost in those limits, subsequent to the date of definite location?

A. In my former examination I found that there had been lost in the first indemnity limits of the Northern Pacific grant in the State of Minnesota, 1,037,086.19 acres. By this 196 examination I find that there had been lost prior to the date of definite location, 884,929.91 acres, which, by deduction, would show there had been lost subsequent to definite location 152,156.28 acres.

[—] Have you a statement in summarized form of this result of your examination? A. I have.

(The witness produces the statement referred to, and it is marked "Plaintiffs' Washington Exhibit No. 100", and it is offered in evidence.) (See page 200 this record.)

Mr. Moer: That is objected to on the ground that it is incompetent and not the best evidence: Overruled; defendant excepts.

By Mr. Billson:

Q. When did you prepare that, Mr. Marvin?

A. This recapitulation?

Q. Yes.

A. I prepared it after the completion of my examination.

A. And from the detailed minutes made by you?

A. From the detailed schedules which I had to work from.

Q. It is a correct statement of the result of your examination?

A. It is, to the best of my knowledge and belief.

Q: Have you another summarized statement, in a slightly different form, of the results of your examination?

A. I have a statement arriving at the same results and showing the examination as made by withdrawals.

Q. For different sections of the road?

A. For different sections of the road.

Q. Is this a correct statement of the results of your examination? A. Yes, sir.

Mr. Billson: The statement referred to by the witness is produced and marked "Plaintiffs' Washington Exhibit No. 101", and is offered in evidence.) (See page 201, this record.)

197 Mr. Moer: Objected to as incompetent and as not the best evidence. Overruled; defendant excepts.

By Mr. Billson:

Q. Mr. Marvin, have you in your possession any detailed memorandum of the lost tracts which enter into the summary which you have just given us?

A. Yes, sir, I have a detailed statement showing and describing all the tracts which go to make up the area as given in this statement.

Q. With the date and manner of loss? A. Yes, sir.

Q. From what was that originally complied?

A. It is a transcript of a record in the office of the Land Department of the Northern Pacific Railroad Company, which was originally compiled from abstracts taken from the records of the local land offices.

Q. Have you now compared that list corrected it by reference to the tract-books of the General Land Office at Washington? A. Yes, sir, I have.

Q. Can you now state from an examination of the General Land Office tract-books that the list to which you refer is correct? A. I can state that it is correct.

Q. According to the tract-book?

A. According to the tract-book of the General Land Office.

Mr. Billson: The detailed lists of losses referred to by the witness are submitted for the inspection of counsel for the defendants, but are not at present offered in evidence, the question of their introduction in evidence being reserved for future consideration. The plaintiffs offer to hold the cross-examination of this witness open to afford the counsel for defendants such time as they may require to examine the original records of the General Land Office referred to by the witness, for the purpose of verifying the accuracy of his statements, and 198 also to offer to reproduce the witness at any time for further cross-examination, if desired, in the light of any such examination of the Land Office Records, if it shall be deemed expedient to make them.

Cross-Examination

By Mr. Moer:

Q. Mr. Marvin, in making this examination, the results of which you have testified to, you used the tract-books in the General Land Office? A. Yes, sir.

Q. And took the dates as you found them there?

A. Yes, sir.

Q. You had no other sources of information?

A. I relied on the tract-books of the General Land Office.

Q. You think you are fairly correct in your result?

A. I believe so.

Redirect-Examination

By Mr. Billson:

Q. How did you and Mr. Holsberg cooperate in making this examination?

A. We worked in the same manner in which we worked on our previous examination, Mr. Holsberg reading to me from the schedules, and I working entirely upon the tract-books.

Q. With this difference, was there not, that in your former examination you had the benefit of schedules which had been prepared by the Department? A. Yes, sir.

Q. Whereas, in making this examination, Mr. Holsberg read, did he not, from the detailed lists of losses prepared at the Land Department of the Northern Pacific Railroad Company? A. Yes, sir.

Q. To which you have already referred? A. Yes, sir.

199 Q. Wherever there appeared to be any discrepancy between the railroad schedules to which you refer, or the detailed lists of losses and the tract-book records of the General Land Office, what did you do?

A. The schedules were changed to conform with the tract-books of the General Land Office, generally in red ink notations.

Q. So at the present time those schedules conform to the Land Office record? A. Yes, sir.

Q. Mr. Marvin, were you able, from the tract-books, to determine the limits of the conflicting grants?

A. From the tract-books themselves?

Q. Yes. A. No, sir.

Q. How did you determine those?

A. From the map or blue-print which I used, and to which I have referred.

EARL L. MARVIN.

Sworn to and subscribed before me this 26th day of March, A. D. 1901.

(Notarial Seal) E. L. WHITE, Notary Public,
For the District of Columbia.

(It is stipulated and agreed by and between counsel for the respective parties that Mr. Barend Holsberg, who is present, shall be deemed to have been called and to have testified that he assisted Mr. Marvin in making the examination testified to by Mr. Marvin, in the manner stated by Mr. Marvin, and that he at all times read correctly to Mr. Marvin the contents of the schedules or detailed lists of losses referred to by Mr. Marvin, and that wherever discrepancies were found to exist between the said schedules and the tract-books, the schedules were corrected to conform to the tract-books, as stated by Mr. Marvin.

(Notarial Seal) E. L. WHITE, Notary Public,
For the District of Columbia.

200 Complainants' Washington Exhibit 100. (Offered in Evidence at page 196 this record.)

Losses within N. P. 1st Ind. Limits, Minn., prior to Def. Location.

"A." Lost prior to N. P. Grant July 2, 1864.	Swamp-P. E. etc.	308,444,93	
	L. S. & M. 10 Miles.	55,447.34	
	St. P. & N. P. 6 & 10 mile,	44,598.77	
	Mille Lacs Ind. Res.	22,412.67	430,903.71 acres
Lost between the date of N. P. Grant & dates of Def. Location.	P. E. etc	224,808.71	
	L. S. & M. 20 mile	37,710.81	
	L. S. & M. 30 mile	4,976.54	
	St. P. & N. P. 15 & 20 mile	28,840.09	
	St. Vin. Ext. St. P. M. & M. 10 mile.	41,323.79	
	White Earth Ind. Res.	116,366.26	454,026.20 acres
Total Loss prior to Definite Location			884,929.91 acres

Lost in 1st Ind. Lts	1,037,086.19
" prior to D. L.	884,929.91
" subsequent to D. L.	152,156.28 acres.

United States Circuit Court, District of Minnesota, Fifth Division.

John A. Humbird et al.,
vs. In Equity.
Waldo A. Avery et al.

Complainants' Washington Exhibit No. 100. to deposition of Earl L. Marvin.

(Notarial Seal) E. L. WHITE, Notary Public,
For the District of Columbia.

Indorsed: Filed April 18th, 1901. Henry D. Lang, Clerk. By Thos. H. Pressnell, Deputy Clerk.

COMPLAINANTS WASHINGTON EXHIBIT No. 101.
(Offered in evidence at page 196, this record.)

Losses within N. P. 1st Ind. Limits in Minn. prior to Definite Location.

	A	B	A	B	B	A	B	B		A	B
DEFINITE LOCATION.	Swamp P. E. etc. prior to date of N. P. Grant July 2, 1864.	P. E. etc. made between date of Grant and definite Location.	L. S. & M. 10 mile Grant May 5, 64	L. S. & M. 20 mile Indian Selections	L. S. & M. 30 mile [Idian] Selections	St. P. & N. P. 6 and 10 mile Grant of 3, 3, 57	St. P. & N. P. 15 and 20 mile [Idian] Selections	St. Vin Ext. Outside N. P. 10 mile Grant of Mar. 3, 1871.	St. P. M. & M. General Routes	Mille Lacs Ind. Res. Treaty 2, 22, 55 " 3, 11, 63	White Earth Ind. Res. Treaty 3/19/67
Superior to Ashland July 6th, 1882	14,360.24	50,430.07									
N. P. Junct. to Superior July 6, 1882.	7,689.57	2,936.28		3,641.46	4,976.54						
N. P. Junct. to Red River 4th P. M. Nov. 21/71.	223,287.41	21,426.06	55,447.34	34,069.35		17,352.17				22,412 67	
N. P. Junct. to Red River 5th P. M. Nov. 21/71.	63,107.71	150,016.30				27,246.60	28,840.09	41,323.79			116,366.26
Total	308,444.93	224,808.71	55,447.34	37,710.81	4,976.54	44,598.77	28,840.09	41,323.79		22,412.67	116,366.26

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202 Testimony taken on behalf of Complainants, at Duluth, on January 31st, 1901, and filed February 11th, 1901.

Percy E. Barber, being duly sworn as a witness on behalf of the complainants, testifies as follows:

Direct-Examination

By Mr. Billson:

Q. You may state your age, residence and occupation.

A. Age, forty-two; residence, Saint Paul, and occupation, draughtsman.

Q. Are you now in the employ of the Northern Pacific Railway Company? A. I am.

Q. How long have you been engaged as draughtsman by that Railway Company or its predecessor Company?

A. Over six years.

Q. How long have you been engaged in the occupation of draughtsman? A. Eleven years.

Q. Have you in your possession a certified copy of the map of definite location of the Northern Pacific Railroad Company from Thompson Junction to Fargo? A. I have.

Witness produces the certified copy referred to.

Q. Have you, Mr. Barber, also in your possession a blue print copy of that map made in your office at St. Paul?

A. I have. (The witness produces the blue print copy to which he refers.)

The blue print referred to by witness is marked "Exhibit 1." (Omitted see page 354, this record.)

203 It is stipulated, That the blue print, marked "Exhibit 1", may be offered and received in evidence with like effect as though the certified copy were offered and received: it was thereupon offered and received in evidence.

Q. Mr. Barber, have you also in your possession a certified copy of the Northern Pacific Railroad Company map of definite location from Thomson Junction to a point in Wisconsin east of Ashland?

A. I have. (The witness produces map referred to.)

Q. Have you also in your possession a blue print copy of this map made at your office in St. Paul?

A. I have. (The witness produces the blue print in question, and it is marked "Exhibit 2".)

It is stipulated, That the blue print may be offered and received in evidence with like effect as though certified copy: It was thereupon offered and received in evidence: (Omitted. See page 354 this record.)

The witness produces, at the request of counsel, a copy certified under the hand and seal of the Commissioner of the General Land Office, of a map showing the limits of the Northern Pacific Grant from Thomson Junction to Fargo.

Q. Mr. Barber, have you in your possession a correct copy of that map? A. I have.

Q. Mr. Barber, by whom was the copy of the certified copy made which you now produce? A. Made by myself.

Q. You know it to be a correct copy? A. I do.

204 The copy last referred to by the witness is marked "Exhibit 3" and offered in evidence, and, it is stipulated, That it may be received with like effect as though duly certified under the hand and seal of the Commissioner of the General Land Office. (See page 364 this record.)

Q. Mr. Barber, the certificate attached to the copy of the map which you made is also a copy of the certificate attached to the Commissioner's map? A. Yes, sir.

The witness, at the request of counsel, then produces a copy certified under the hand and seal of the Commissioner of the General Land Office, of a diagram showing the limits of withdrawal of lands in the States of Wisconsin and Minnesota for the benefit of the Northern Pacific Railroad Company ordered on a map purporting to show the definite location from the Junction of the St. Paul & Duluth, Minnesota, to Superior City, Wisconsin.

Q. Have you made, Mr. Barber, a correct copy of the map which you now produce? A. I have.

The copy referred to by witness is marked, for the purpose of identification, as "Exhibit 4".

The witness then produces, at the request of counsel, a copy certified under the hand and seal of the Commissioner of the General Land Office, of a diagram showing the limits of a withdrawal for the benefit of the Northern Pacific Railroad Company in the States of Wisconsin and Minnesota 205 ordered on map purporting to show the definite location of said Company's Road from Superior City to a point in Section 15, Township 47 North, of Range 2 West, Wisconsin.

Q. Mr. Barber, have you made a correct copy of this map which you now produce?

A. I have. (The witness produces the copy to which he refers, and same is marked for identification, "Exhibit 5".)

Q. Have you also in your possession a map certified under the hand and seal of the Commissioner of the General Land

Office, of a diagram showing conflicting limits of the grants for the Lake Superior and Mississippi or the Saint Paul and Duluth and the Northern Pacific Railroads? A. I have.

Q. Have you made a correct copy of this map? A. I have.

Witness produces the copy to which he refers, and which is marked for identification as "Exhibit 6".

Q. I ask you, Mr. Barber, whether you observe upon this map some pencil marks which have been made since you completed it? A. I do.

Q. Check marks of certain tracts within the ten to twenty mile limits on either side of the St. Paul and Duluth Road?

A. Yes, sir.

Q. Those pencil marks are no part of the map as certified by the Commissioner or copy made by you?

A. No, sir, no part.

206 Complainants now offer in evidence as ""Exhibit 7", pages 14 and 15 of a statement showing land grants made by Congress to aid in the construction of railroads and internal improvements compiled from the records of the General Land Office by order of the Secretary of the Interior and published in 1888 at the Government Printing Office under authority of law. (See page 372, this record.)

Mr. Sanford: Objected to as incompetent, and no foundation laid for introduction of same, and not properly authenticated.

A. A. Holt, sworn as a witness on the part of the Complainants, testifies as follows:

Q. Mr. Holt, I hand you six documents—will you please state if you know whether they are correct copies of original letters on file in the United States Land Office, at Duluth?

A. They are, yes, sir.

Q. Do you know that by personally comparing them with the originals? A. Yes, sir.

The letters are marked Exhibits 8, 9, 10, 11, 12, 13, respectively and are offered in evidence. (See pages 373, 375, 377, 379 and 381, this record.)

Mr. Harris: Each and all of the exhibits objected to as incompetent, and no proper foundation for same.

Q. Did you make these copies yourself? A. Yes, sir.

Q. In the Land Office? A. Yes, sir.

207 Q. Where the original letters of which these are copies taken by the clerk in the Land Office out of the vault and the letter-files there, just before you copied them?

A. Yes, sir.

Mr. Harris: I will state that the objection does not go to the question as to whether these are copies or not.

Q. Mr. Holt, I hand you three documents, fastened together, and purporting to be transcripts from Swamp Land Lists, numbered 4, 6 and 19, and ask you whether you have compared those lists with the original lists of swamp land selections approved to the State of Minnesota, on file in the Local Land Office of the United States, at Duluth? A. Yes, sir.

Q. Do you know those to be correct copies? A. Yes, sir.

Q. Did you embrace in those copies all of those descriptions in the several lists, or only certain portions of them?

A. Certain portions.

Q. You included only so far as descriptions of land are concerned only those descriptions which I handed you and requested you to include?

A. Only those; there were parcels including more than any single description and I did not separate them, but took the parcel the description was in.

Q. The only portions of any [of any] of those lists which are not included in your copy are certain descriptions of tracts of land entirely distinct from those which appear in your
208 copy? A. Yes, sir.

Q. Each of those lists included large numbers of descriptions in addition to those which you transcribed?

A. Yes, sir.

Q. Lists of considerable length? A. Yes, sir.

(The documents referred to are marked "Exhibit 14" for the purpose of identification.)

Complainants now offer in evidence the maps heretofore marked for identification as Exhibits "4," "5," and "6." (See pages 366, 368 and 370, this record.)

Mr. Harris: Exhibits "4" and "5" are objected to on the ground of incompetency and that no proper foundation is laid for same; no objection to "Exhibit 6."

It is admitted in reference to Exhibits "8," "9," "10," "11," "12," "13" and "14," by the defendants, that the objections taken do not go to the question as to their being copies of the originals, but the objections are made against the effect of the instruments themselves.

It is stipulated, That the maps marked "Exhibits "4," "5," and "6," respectively, shall be received with like effect as though duly certified under the hand and seal of the Commissioner of the General Land Office.

Upon "Exhibit 6," in the ten to twenty mile limits of the St. Paul and Duluth Road, there are pencil check marks of different colors which are not a part of the map as prepared by Mr. Barber, and which are not included in the offer.

The Complainants offer in evidence a certified transcript of
the report of the Commissioner on construction of the
209 Northern Pacific Road from Thomson Junction to
Fargo, dated December 10th, 1872, and the papers annexed thereto, and the indorsements thereon including the approvals of the Secretary of the Interior and the President. The Exhibit is marked "Exhibit 15." (See page 390, this record.)

As "Exhibit 16", the complainants offer in evidence a similar report, recommendations and approvals, with reference to the construction of the Northern Pacific Road from Thomson Junction to Bluff Creek in Superior, dated September 7th, 1882. (See page 398, this record.)

As "Exhibit 17," the complainants offer in evidence a similar report with the recommendations and approvals annexed, dated January 18th, 1884, relative to the construction of the Northern Pacific Road from Bluff Creek in Superior to a point about three-fourths of a mile east of Brule River in the Southwest quarter of Section 13, in Township 47 North, of Range 10. (See page 402, this record.)

As "Exhibit 18", the complainants offer in evidence a similar report with the annexed recommendations and approvals, dated January 31st, 1885, relating to the construction of the Northern Pacific Road Railroad from a point near Ashland on Lake Superior westwardly to the terminus of the constructed section of said Road, accepted by the President, January 31st, 1884, in the Southwest quarter of Section 13, Township 47, Range 10. (See page 406, this record.)

George H. LeSage, being sworn as a witness on behalf of the Complainants, testifies as follows:

By Mr. Billson:

Q. Mr. LeSage, do you reside in Duluth? A. Yes, sir.
Q. How long have you lived here?
210 A. About twelve years.
Q. Have you been employed in the United States Land Office here? A. Yes, sir.
Q. For about how long? A. About four and a half years.
Q. How long is it since you left? A. Since May, 1898.
Q. You are familiar with the records of the office?
A. Yes, sir.

Q. I hand you seven documents and ask you whether they are true copies of original selection lists of the Northern Pacific Railroad Company? on file in the United States Land Office at Duluth? A. Yes, sir.

Q. Have you compared them with the originals?

A. Yes, sir.

Q. And you know them to be correct? A. Yes, sir.

Q. Did you have any assistance in the examinations?

A. Yes, sir.

Q. Who assisted you? A. H. L. Billson.

Q. In what way did you co-operate?

A. He read from the originals and I compared and corrected the copies from the original selections.

Q. From the original selection lists on file in the Local Land Office? A. Yes, sir.

211 Q. These copies include the indorsements upon the lists as well as the lists themselves? A. Yes, sir.

Q. And all indorsements found upon the copies are also found upon the original lists? A. Yes, sir.

Q. There is nothing appears in any part of these copies, by way of indorsement or otherwise, which does not appear upon the original lists, except these blue pencil marks which I have placed upon them since you made them—and your initials? A. That is all.

The Complainants offer in evidence the seven documents identified by the witness. List No. 10, of October 18th, 1883, is marked "Exhibit 19"; List No. 10, of October 10th, 1887, is marked "Exhibit 20"; List No. 10, of July 19th, 1891, is marked "Exhibit 21"; List No. 15 of October 18th, 1883, is marked "Exhibit 22"; List No. 15B, of April 11th, 1893, is marked "Exhibit 23"; List No. 16 of October 18th, 1883, is marked "Exhibit 24"; List No. 16 of April 11th, 1893, is marked "Exhibit 25". (See pages 411, 419, 436, 448, 457, 472 and 477, this record.)

Mr. Harris: The defendants object to the introduction of Exhibits from 19 to 25, inclusive, on the ground that they are incompetent for any purpose, that they are not the best evidence and that no proper foundation has been laid for the same. The objection, however, does not go to the question that the copies introduced are not copies of the originals, and that the lists in said exhibits are not made in accordance with the rules and regulations prescribed by the United States Land Department. Overruled. Defendant excepts.

212 Mr. Billson:

Q. Mr. LeSage, I hand you documents purporting to be transcripts from certain tract books of the United States Local Land Office at Duluth—you may state whether that is a true transcript of all entries to be found upon the tract books of the Local Land Office at Duluth, affecting any of the lands therein mentioned? A. Yes, sir, it is.

Q. You made the examination with care and thoroughness, did you? A. Yes, sir.

Q. And you did all of the work yourself? A. Yes, sir.

Q. And you know it to be correct? A. Yes, sir.

The complainants offer in evidence the transcript referred to by the witness, for the purpose of showing that at the dates when the several tracts of land involved in this action were selected by the Northern Pacific Railroad Company, they were unappropriated public lands of the United States, and the document is marked "Exhibit 26". (See page .... this record.)

Mr. Harris:

"Exhibit 26" is objected to on the ground that it is incompetent, not the best evidence, and no proper foundation laid for the introduction of the same; the objection does not go to the point that the exhibit is not a copy of what it purports to be a copy. Overruled. Defendant excepts.

Mr. Billson:

We now offer, for the purpose of showing losses of certain of the lands relied upon as basis for the selections of these lands by the Railroad Company, the transcripts heretofore identified by the witness, A. A. Holt, and marked "Exhibit 14". (See page 382 this record.)

213 Mr. Harris:

"Exhibit 14" is objected to on the ground that it is incompetent, not the best evidence, and no proper foundation laid for the introduction of the same, but the objection does not go to the point that it is not a true copy of what it purports to be a copy. Overruled. Defendant excepts.

The witness, LeSage, is shown the document and is asked whether it is a true copy of all the entries in the tract books of the Local Land Office, at Duluth, relating to the particular parcels of land therein described.

A. Yes, sir.

Q. Did you make the examination and compare it with the original with care? A. Yes, sir.

Q. And you did all of the work yourself? A. Yes, sir.

The document referred to by the witness is offered in evidence in proof of certain losses of lands in place limits of the Northern Pacific Railroad Company, and marked "Exhibit 27". (See page 491 this record.)

Cross-Examination

By Mr. Harris:

Q. Mr. LeSage, from what books did you obtain this list as made—what governed you in your search for these particular selections?

A. In the first place you take the first township—there is a plat directing you as to the number of the tract book.

Q. Do I understand you to say that this list here shows all of the entries made on any of the Land Office books in the Land Office affecting these particular selections?

A. That is all.

214 Q. This affects all of them? I mean this shows every disposition that has been made of each particular tract mentioned in this list? A. Yes, sir.

"Exhibit 27" is objected to by defendants on the ground that it is incompetent, not the best evidence, no proper foundation laid for the introduction of the same, and that the same is not prepared in accordance with the rules and regulations of the Land Department governing such lists, but the objection does not go to the point that it is not a true copy of what it purports to be a copy.

The Complainants offer in evidence a certified transcript from the tract books of the Local Land Office of the United States, at Crookston, Minnesota, for the purpose of showing losses of certain tracts in place limits of the Northern Pacific Railroad assigned as basis for some of the selections relied upon in this case, and said document is marked "Exhibit 28". (See page 492 this record.)

Mr. Harris:

Exhibit 28 is objected to on the ground that it is incompetent, not the best evidence, no proper foundation laid for the same, and that the list is not prepared in accordance with the rules and regulations established by the Land Department, but the objection does not go to the point that the instrument is not a copy of what it purports to be, nor to the form of the authentication, and the right of the Local Land Officers to certify to transcripts of their tract books is admitted. Objection overruled. Defendant excepts.

215 By Mr. Billson:

Q. Mr. LeSage, I hand you five documents and ask you whether they are true copies of original letters on file in the Local Land Office of the United States, at Duluth?

A. Yes, sir.

Q. You compared them with the originals on file and know them to be correct? A. Yes, sir.

The copies of letters referred to by the witness are offered in evidence by complainants and are as follows:

A letter from the Commissioner of the General Land Office, of January 22nd, 1897, enclosing diagram showing the eastern terminal of the Northern Pacific Grant as established at Duluth, by the Secretary's decision of August 29th, 1896. This letter is marked "Exhibit 29". (See page 493 this record.)

Letters from Binger Hermann, Commissioner of the General Land Office, dated July 17th, 1897, and July 22nd, 1897, respectively with an annexed notice of restoration of lands, dated July 29th 1897, signed by the Local Register and Receiver. These two letters and notice, which relate to the restoration to the public domain of certain lands lying east of the Northern Pacific terminal as established at Duluth in 1896, are attached together and marked "Exhibit 30". (See page 493 this record.)

A letter of July 12th, 1900, from the Assistant Commissioner of the General Land Office reinstating Northern Pacific Selection List No. 10, in pursuance of a decision of the Supreme Court holding the eastern terminal of the Company to be at Ashland, Wisconsin. This letter is marked "Exhibit 31". (See page 496 this record.)

216 A letter of the same date from the Assistant Commissioner reinstating the Northern Pacific Railway Selection List No. 16, upon the same grounds assigned in the preceding letter. This letter is marked "Exhibit 32". (See page 497 this record.)

A letter of July 12, 1900, from the Assistant Commissioner reinstating Northern Pacific Railroad Selection List No. 9, upon the same grounds assigned in the preceding letters. This Letter is marked "Exhibit 33". (See page 498 this record.)

Mr. Harris:

No objection to Exhibit 29 and 30; Exhibit 31 is objected to on the ground that it is incompetent and no proper foundation laid for introduction of the same, but it is admitted to be a copy of the original.

Exhibit 32 is objected to on the ground that it is incompetent and no proper foundation laid for the introduction of same, but it is admitted to be a copy of the original.

Exhibit 33 is objected to on the ground that it is incompetent and no proper foundation laid for the introduction of the same, but it is admitted to be a copy of the original.

217 Percy E. Barber, recalled as a witness on behalf of the Complainants, testifies as follows:

Q. Mr. Barber, have you, since you were last on the stand, added anything to the map, "Exhibit 5", which is not found upon the map of which this was intended as a copy?

A. I have.

Q. By consent of counsel, as you understood it? A. Yes.

Q. What have you added to the map?

A. The final Eastern terminal Northern Pacific Railroad, Secretary's Decision, August 27, 1896.

Q. Where did you get that line?

A. In the Local Land Office at Duluth, from the diagram there on file certified under the hand and seal of the General Land Office.

Mr. Harris:

No objection to the evidence just given by Mr. Barber with reference to Exhibit 5, but this stipulation is not intended to waive any previous objections made to said exhibit. It is admitted that the evidence of Mr. Barber as to the line testified to on Exhibit 5 is the line as shown on the diagram referred to in Exhibit 29.

218 H. L. Billson, sworn as a witness on behalf of the Complainants, testifies as follows:

Q. Do you reside in Duluth? A. I do.

Q. Did you assist Mr. LeSage in comparing with the original selection lists on file in the Local Land Office, at Duluth, the copies of those lists which he has referred to in his testimony and which have been offered in evidence here? A. Yes, sir.

Q. What part did you take?

A. I read from the original lists while he looked on and compared the copies with what I read.

Q. Did you read correctly in all cases from the original lists and with reference to all indorsements upon them?

A. I did.

It is stipulated, That the decision of the Secretary of the Interior, of November 13th, 1895, as published in Volume 21 of Land Decisions, at page 412, and following pages, holding that the eastern terminal of the Northern Pacific Grant is no further east than Superior, Wisconsin, and the Decision of the Secretary of the Interior, of August 27th, 1896, as published in Volume 23 of Land Decisions, at page 204, and following pages, holding that the eastern terminus of the Northern Pacific Grant was at Duluth, Minnesota, shall be deemed in evidence and may be read from the published volume at the final hearing without being embraced in the printed record. 219

It is also stipulated, That the following is a true and correct copy of the Circular of Instructions issued May 28th, 1883, by H. M. Teller, Secretary of the Interior, to the Commissioner of the General Land Office, published in Volume XII, Land Decisions, page 196.

"May 28, 1883.

The Commissioner of the General Land Office:

[sir;] Sir: It is my desire to open for settlement as speedily as possible all the lands within the indemnity limits of the grant to the Northern Pacific Company not actually required to supply the lands lost in place within the granted limits.

The grant should be adjusted at the earlist possible time, that the orders of withdrawal may be vacated without unreasonable delay, as indicated in my letter of the 17th instant.

The unparalleled demand for lands for actual settlement by great numbers of persons, not only from foreign countries, but from the older States, seeking homes, under the settlement laws, along the line and in the vicinity of the Northern Pacific grant requires, for the best interest of the country, and for all parties concerned, that the withdrawals should not be maintained any longer than is actually necessary for the adjustment of the guaranteed rights of the company.

In order to facilitate the work of making selections, I think you should interest the local officers that, when clear lists of selections, free from conflict or other objection, are filed with the district officers and approved by them, said selections should at once be marked upon their books and forwarded for final examination, leaving the ascertainment of the lands lost in place to your office, instead of requiring preliminary lists of such lost lands, together with the indemnity lands, tract for tract, from the company as heretofore.

I am satisfied that the work of adjusting the grant will go forward much more rapidly under this plan than under the former practice.

Very respectfully,
H. M. TELLER,
Secretary.

220 Complainants here offer in evidence a copy, certified under the hand and seal of the Acting Secretary of the Interior, of a letter of February 25th, 1897, from the Acting Secretary to the President of the Senate, transmitting a report from the Acting Commissioner of the General Land Office, upon the deficiency in the Northern Pacific Railroad Company Grant. This letter is marked "Exhibit 34". (See page 500 this record.

Mr. Harris:

Exhibit 34 is admitted to be a copy of the original, but the same is objected to on the ground that it is incompetent and no proper foundation laid for the introduction of the same. Overruled. Defendant excepts.

Complainants offer in evidence a copy, certified under the hand and seal of the Commissioner of the General Land Office, of a letter from the Acting Commissioner to the Secretary of the Interior, of February 23, 1897, relating to the deficiency in the Northern Pacific Railroad Company Land Grant, being a copy of the same letter referred to by the Secretary of the Interior in "Exhibit 34". This letter is marked "Exhibit 35". (See page 501 this record.)

Mr. Harris:

Exhibit 35 is admitted to be a copy of the original instrument, but is objected to on the ground that it is incompetent, and that no proper foundation has been laid for the introduction of the same, and that it is not the best evidence. Overruled. Defendant excepts.

Complainants also offer in evidence, as "Exhibit 36", a copy, certified under the hand and seal of the Commissioner of the General Land Office, of a letter or report with the annexed exhibits from the Commissioner of the General
221 Land Office to the Secretary of the Interior, dated June 7th, 1900, and relating to the deficiency in the Northern Pacific Railroad Company Grant. This letter is marked "Exhibit 36". (See page 502 this record.)

Mr. Harris:

Exhibit 36 is admitted to be a copy of the original, but the same is objected to on the ground that it is incompetent, not the best evidence, and no proper foundation has been laid for the introduction of same. Overruled. Defendant excepts.

Complainants offer in evidence a copy, certified under the hand and seal of the Commissioner of the General Land Office, of Clear List No. 9 of Selected Lands approved to the Northern Pacific Railroad Company so far as the said list relates to the particular tract therein described. This letter is marked "Exhibit 37". (See page 508 this record.)

Mr. Harris:

Exhibit 37 is admitted to be a copy of the original, but it is objected to on the ground that it is incompetent. Overruled. Defendant excepts.

Lee W. Farmer, being sworn as a witness on the part of the Complainants, testifies as follows:

Mr. Billson:

Q. I hand you a document and would like you to state whether that is a true copy of the Patent from the United

States to the Northern Pacific Railroad Company, recorded in Book 151 of Deeds, at page 98 and following pages, in the office of the Register of Deeds for Saint Louis County, Minnesota, a copy of the record? A. It is.

222 Q. Did you carefully copy and compare it, yourself, with the original record? A. I did.

Q. And you know it to be correct? A. Yes, sir.

Q. Are all the descriptions included in your copy which were included in the patent? A. No, sir.

Q. Is it a copy of the Patent so far as it concerns the particular tracts described in the copy? A. Yes, sir.

Q. Were there a large number of other tracts described in the same Patent? A. Yes, sir.

Complainants offer in evidence the copy referred to and same is marked "Exhibit 38".

Mr. Harris:

Exhibit 38 is admitted to be a true copy of the original, but it is objected to on the ground that it is incompetent.

Complainants offer in evidence a certified copy of an Amended Decree of Sale of Lands of the Northern Pacific Railroad Company east of the Missouri River, made in the Circuit Court of the United States for the District of Minnesota, in the case of "Farmers' Loan and Trust Company vs. The Northern Pacific Railroad Company et al." which is marked "Exhibit 39". (See page 518 this record.)

223 Complainants also offer in evidence a certified copy of the Decree of the same Court confirming the sale of lands made in pursuance of the Decree numbered "Exhibit 39." The document is marked "Exhibit 40." (See page 528 this record.)

Mr. Harris: Exhibits 39 and 40 are admitted to be true copies of the originals, but are objected to on the ground that they are incompetent. Overruled. Defendant Excepts.

Complainants also offer in evidence, as "Exhibits "41" and "42," respectively, certified copies of the Deeds of Special Master upon the sale of lands referred to in the last two preceding Exhibits, Exhibit 41 relating to lands in Saint Louis County, Minnesota, and Exhibit 42 relating to lands in Lake County, Minnesota, and each deed running to the Northern Pacific Railway Company, as grantee. (See pages 533 and 541 this record.)

Mr. Harris: Defendants admit that Exhibits 41 and 42 are true copies of the originals, but object to the same as incompetent.

Complainants also offer in evidence as "Exhibit 43," an original deed of the lands of the Northern Pacific Railroad Company east of the Missouri River, executed December 21st, 1899, by the Northern Pacific Railroad Company to the Northern Pacific Railway Company, in confirmation of the judicial sale referred to in the last four preceding Exhibits. (See page 550, this record.)

Complainants also submit a copy of this deed and it is stipulated that after the Examiner shall have satisfied himself that the same is a true copy, he may file the copy as "Exhibit 43," and return the original deed to the attorneys for the complainants.

224 Mr. Harris: Exhibit 43 is admitted to be the original instrument that it purports to be, but it is objected to on the ground that it is incompetent. Overruled. Defendant Excepts.

By consent of counsel the further taking of testimony before the General Examiner, on the part of the Complainants, is continued until nine o'clock A. M. of January 31st, 1901, at his office in the Federal Building, Duluth, Minnesota.

225 Thursday, January 31st, 1901, nine o'clock A. M.

The taking of testimony is this day resumed, all parties being present as before, except that H. H. Hoyt, Esq., appears in person for all clients for whom he has appeared and answered.

Mr. Billson: The Complainants offer in evidence, as their "Exhibit 44," transcripts certified by the Register and Receiver of the Local Land Office at Saint Cloud, Minnesota, of the Tract Books of that office, relating to the lands referred to in the transcripts and from the Register of Homestead Entries and Abstract of Pre-emption Declaratory Statements. (See page 558, this record.)

Mr. Harris: Objected to as incompetent, not the best evidence, no proper foundation laid for the same, and as not being certified to in accordance with the rules and regulations of the Land Department in such cases. My objection goes to the form and effect of the certification. The right of the Register and Receiver to certify to transcripts from the records of their office is conceded and it is stipulated that the transscripts offered shall have the same force to which they would be entitled if verified by oath as transcripts from the records of the Local Land Office at Saint Cloud. Overruled. Defendant Excepts.

Mr. Billson: The Complainants offer in evidence, as "Exhibit 45," a transcript under the hand and seal of the Commissioner of the General Land Office, of a letter of May 26th, 1900, reinstating Northern Pacific Selection Lists, 15, 15A, 15B, and 20. (See page 562 this record.)

226 Mr. Harris: Objected to as incompetent.

Mr. Billson: Complainants offer in evidence as "Exhibit 46," a transcript, certified under the hand and seal of the Commissioner of the General Land Office, of a letter from the Secretary of the Interior to the Commissioner of the General Land Office, of November 20th, 1871, transmitting a map of the completed portion of the Northern Pacific Railroad from Thomson Junction to the Red River of the North. (See page 564 this record.)

Mr. Harris: Exhibit 46 is objected to as incompetent.

Mr. Billson: Complainants offer in evidence as their "Exhibit 47" a transcript, certified under the hand and seal of the Commissioner of the General Land Office, of a Certificate of Authority, dated October 23, 1882, to Charles B. Lamborn to make selections of lands on behalf of the Northern Pacific Railroad. (See page 564 this record.)

Mr. Harris: Exhibit 47 is objected to as incompetent and not the best evidence.

Mr. Billson: Complainants offer in evidence as "Exhibit 48," a Transcript, certified under the hand and seal of the Commissioner of the General Land Office, of certain letters of October and November, 1886, from the Secretary of the Interior to the Commissioner of the General Land Office, relative to the definite location of the Lake Superior and Mississippi Railroad. (See page 566 this record.)

Mr. Harris: Exhibit 48 objected to on the grounds that it is incompetent, not the best evidence, and no proper foundation laid for the same.

Mr. Billson: Complainants offer in evidence as "Exhibit 49" a transcript, certified under the hand and seal of the Commissioner of the General Land Office, of a letter or report from the Commissioner to the Secretary of the Interior, dated May 3rd, 1900, relating to the second indemnity lands of the
227 Northern Pacific Railroad Company in the State of Minnesota. (See page 569 this record.)

Mr. Harris: Exhibit 49 is objected to on the ground that it is incompetent, not best evidence, no proper foundation laid for the introduction of the same, and that it appears from the Exhibit itself that it is not a complete instrument.

Mr. Billson: Complainants offer in evidence, as "Exhibit 50," a Deed from the Northern Pacific Railway Company to the Complainants, dated January 19th, 1900, for certain lands, including all those in controversy in this cause, lying in the County of Lake, in the State of Minnesota. (See page 575 this record.)

Mr. Harris: Objected to as incompetent. Overruled. Defendant Excepts.

Mr. Billson: Complainants also offer in evidence, as their "Exhibit 51," a Deed from the Northern Pacific Railway Company to the Complainants, dated January 19th, 1900, for certain lands including all those in controversy in this cause which lie in Saint Louis County, Minnesota. (See page 579 this record.)

Mr. Harris: Objected to as incompetent. Overruled. Defendant Excepts.

Mr. Billson: The Complainants submit with these two Deeds, Exhibits 50 and 51, what purports to be copies of them and it is stipulated that the Examiner upon satisfying himself of the correctness of such copies, may file the copies as the exhibits in the case and return the originals to the attorneys for the Complainants.

The Complainants also offer in evidence, as "Exhibit 52," a certified copy of an order of the Circuit Court of the United States for the Eastern District of Wisconsin, authorizing the assignments by the Receivers of the Northern 228 Pacific Railroad Company of claims for damages on account of trespass upon lands belonging to said Company or to themselves as Receivers. (See page 594 this record.)

Mr. Harris: Objected to as incompetent.
Mr. Jaques: Objected to as incompetent.

Mr. Billson: Complainants offer in evidence as "Exhibit 53," an Assignment dated October 31st, 1899, from the Receivers of the Northern Pacific Railroad Company, and also from the Northern Pacific Railroad Company to the Northern Pacific Railway Company of claims for damages on account of trespass committed upon lands lying in the State of Minnesota and elsewhere east of the Missouri River. (See page 595 this record.)

Mr. Harris: Objected to as incompetent.

Mr. Billson: Complainants also offer in evidence, as their "Exhibit 54," an Assignment from the Northern Pacific Railway Company to the Complainants, of claims for damage by way of trespass upon the lands involved in this suit and other lands. (See page 598 this record.)

Mr. Harris: Objected to as incompetent.

Mr. Billson: The Complainants submit with the original instrument what purports to be a copy and it is stipulated that the Examiner upon satisfying himself of the correctness of the copy may file the same as the exhibit and return the original to the attorneys for the Complainants.

William Waugh, being sworn as a witness on the part of Complainants, testifies as follows:

Direct Examination

By Mr. Billson:

Q. Where do you reside? A. Saint Paul.

Q. What is your business?

A. Chief Clerk of the Northern Pacific Railway Company Land Department.

229 Q. How long have you been employed in that capacity? A. Since the first of January, 1898.

Q. Prior to that time how long were you in the office?

A. Almost continuously with the Land Department since 1885.

Q. Are you as Chief Clerk in charge of the records of the Office? A. Yes, sir.

Q. Do you receive all mail addressed to the Land Commissioner of the Company? A. I do.

Q. I call your attention to the map marked "Exhibit 5" and to the ink line extending northeasterly from Duluth and marked "The final Eastern Terminal Northern Pacific Railroad Company, Secretary's Decision, August 27, 1896," and I also call your attention to the provision of the Act of July 1st, 1898, to the effect that the Secretary of the Interior was from time to time to ascertain and as soon as might be conveniently done, cause to be prepared and delivered to the said railroad grantee or its successor in interest, a list or lists of the several tracts which have been purchased or settled upon or occupied as aforesaid, and are now claimed by said purchasers or occupants, their heirs or assigns,—I ask you whether the Land Commissioner of the Northern Pacific Rail road Company or the Northern Pacific Railway Company has ever received from the Secretary of the Interior any such lists or notices respecting lands which have been purchased or settled upon, or occupied at any point east of the line to which I have called your attention upon the map, "Exhibit 5?"

Mr. Harris: Objected to as incomptent. Overruled. Defendant Excepts.

A. No such demand has ever been received by the Land Commissioner.
Q. Nor any list or notice of that description?

Mr. Harris: Same objection. Overruled. Defendant excepts.

230 A. None covering lands east of that line.
Q. Have any such lists been received, so far as you know, by the Northern Pacific Railroad Company?

Mr. Harris: Objected to as incompetent. Overruled. Defendant excepts.

A. I don't know of any.
Q. If any such had been received, what would have been done with them—in what office would they have been filed?
A. They would have come to us through Washington counsel.
Q. And if they were received by any officer of the Company would they come into your office? A. Yes, sir.

Charles B. King, sworn as a witness on behalf of the Complainants, testifies as follows:

By Mr. Billson:
Q. Mr. King, you reside in Duluth? A. Yes, sir.
Q. What is your business?
A. Clerk in the United States Land Office.
Q. At Duluth? A. Yes sir.
Q. For how many years have you been so employed?
A. Well, I am in the ninth year.
Q. You are familiar with the records and files in the office? A. Yes, sir.
Q. Mr. King, have you examined to see whether there are now to be found in the files and records at the Local Land Office at Duluth any of the withdrawal diagrams of the Northern Pacific Railroad Company transmitted either in 1871 or 1882, 1883, 1884?

Mr. Harris: Objected to as incompetent.

231 A. I have.
Q. Are any such diagrams to be found there now?

Mr. Harris: Same objection.

A. I have never been able to find them.
Q. Has your search been of such a character that if in the office you would have found them?

A. I think so; I have been asked a number of times and have looked through the vaults and every place I thought they could possibly be found, and could not find them.

Q. You state that you have been employed in the United States Land Office at Duluth for about nine years?

A. Yes, sir.

Q. You are quite familiar with the records of the office?

A. Yes, I have been associated with them and partly in charge of them pretty nearly all of the time.

Q. Are you the oldest employee in the office?

A. Well, both yes and no; there was another clerk there before I was, but I am the oldest on continuous pay-roll.

Q. Reference has been made in the testimony in this case to Tract Books,—records kept in the local Land Office known as Tract Books,—will you please state the nature of that record,—the character of entries upon it?

A. Well, it is a minute of all applications affecting lands within this District—so treated by me—and entered under the heading of the several sections, opposite the section to which they relate.

Q. From an examination of the records of the office, do you know whether such books have been kept throughout the history of the local office at Duluth?

A. I think so; I never found but one or two cases where there were any entries omitted from the tract-book and
232 I think the omission in each case was through inadvertence; because there are records before then and since then in which similar applications were on the books.

Q. Do these entries to which you refer as being made upon the Tract Book include all forms of disposition of the public domain, whether through private entries of any kind, railroad selection, swamp land selection,—and all other forms of disposition of public lands?

A. Well, it contains all applications of every possible and conceivable nature,—a minute of all applications that have ever been presented against the lands. (By request of counsel for the complainants, the question is read to witness, whereupon he answers): A. Yes.

Mr. Billson: Complainants offer in evidence, as "Exhibit 55," a certified copy of a Timber Deed from the Franklin Lumber Company to William O'Brien, dated November 1st, 1899. (See page 615 this record.)

Mr. Jaques: The Franklin Lumber Company objects to this Exhibit as incompetent.

S. S. Johnson, being sworn as a witness on behalf of Complainants, testifies as follows:

233 Q. Mr. Johnson, do you know anything about the cutting of timber from the southeast quarter of the Northwest quarter, the northeast quarter of the southwest quarter of Section 1, Township 54, Range 13, Saint Louis County, Minnesota, during the winter of 1898-'99?

A. I think I do; yes, sir.

Q. By whom, if you know, was the timber cut?

Mr. Jaques: Objected to on the ground that it is incompetent and on the further ground that no recovery can be had for trespass for the land in this case, which is a proceeding in equity; it appearing that the right of the Complainants to recovery for trespass is a right independent of the title to the land or the assignment of the right of another. No allegation of assignment of this right is contained in the Bill of Complaint.

It is stipulated, that all testimony relating to matters of trespass shall be considered as taken subject to the objections just made.

Mr. Hoyt: The testimony is objected to as incompetent because there is no allegation in the bill sufficient to allow this testimony as to trespass.

A. It was cut by Morris Thomas, or rather by Mr. Howe; Thomas was doing the logging for Howe.

Mr. Jaques:

Q. What Howe was that? A. E. S. Howe.

Q. Were you on the ground while the cutting was going on? A. Yes, sir.

Q. Did you or your Company, Johnson-Wentworth Company, cut the logs? A. Yes, sir.

234 Mr. Billson:

The Complainants asks Messrs. Jaques & Hudson, Attorneys for Franklin Lumber Company, for introduction of original contract between E. S. Howe and Franklin Lumber Company having reference to the cutting of this timber.

Mr. Jaques:

I would state in reference to this that Mr. Webber, President of the Company, is out of town and that I asked the clerk in the office of the Company to get us that contract, but the clerk has been unable to find it; I suppose if Mr. Webber was here we could get it.

Mr. Billson:

You admit the service of the notice to produce that?

Mr. Jaques: Yes.

Mr. Billson:

Q. Mr. Johnson, do you know whether that timber was cut by E. S. Howe by virtue of the contract between himself and the Franklin Lumber Company? A. I think it was.

Q. Do you remember seeing such a contract?

A. I did see it, yes.

Q. In a general way, what was its nature or substance?

A. As I remember it, the Franklin Lumber Company sold to this man, Howe, the timber on this land for so much a thousand.

Q. How much was this?

A. I think the price was $2 per thousand.

Q. Have you a copy of the contract under which you bought the logs from Mr. Howe? A. Yes, sir.

Q. Will you produce it? (Witness produces the contract referred to.)

Q. Is this an original copy of the contract to which you refer? A. Yes, sir.

Q. Are the signatures attached to it the signatures
235 of Johnson-Wentworth Company and of E. S. Howe?
A. Yes, sir, they are.

The contract referred to by witness is offered in evidence as Complainants' "Exhibit 56." (See page 617 this record.)

Mr. Jaques: Objected to as incompetent, irrelevant and immaterial.

Mr. Billson:

Q. Prior to the making of these contracts between the Franklin Lumber Company and Mr. Howe and between Howe and your Company, had you any conversation with any representative of the Franklin Lumber Company in regard to the cutting of this timber? A. Yes, sir.

Q. Did you have some negotiations looking to the purchase of the timber by your Company? A. Some time before.

Q. How did this clause come to be embodied in the contract just offered in evidence as "Exhibit 56," which calls for the payment of $2 a thousand directly from your Company to the Franklin Lumber Company?

Mr. Jaques: Objected to as incompetent, irrelevant and immaterial.

A. I don't know, unless it was so that Mr. Webber would get his pay. Mr. Howe wanted the contract made and we preferred to have it made so that we knew the timber was paid for.

Q. Was the arrangement which was made between you and Mr. Howe agreed upon at the same time that the contract was made with the Franklin Lumber Company?

Mr. Jaques: Same objection.

A. It came to us with the contract from the Franklin Lumber Company to sell us the logs; we bought it as the contract provides.

236 Q. How was the Mr. Webber to whom you refer related to the Franklin Lumber Company?

A. I believe he is the President of the Company,—at least he is the man we did business with.

Q. You have had other transactions with that Company or with Mr. Webber, its representative? A. Yes, sir.

Q. Did you pay the Franklin Lumber Company this $2 per thousand as agreed upon in your contract with Mr. Howe?

A. Yes, sir.

By Mr. Jaques:

Q. You say Mr. Howe?

A. Howe was the man we made this contract with.

Q. You have no knowledge of the Franklin Lumber Company ever doing any logging on this land? A. No, sir.

Q. You bought the logs of Howe? A. Yes sir.

By Mr. Billson:

Q. Have you in your possession any contract between yourself and Michael Kelley with reference to the cutting of timber? A. Yes, sir.

Q. You have come here and produce these documents by virtue of a subpoena? A. Yes, sir.

The witness produces the contract between Michael Kelley and the Johnson-Wentworth Company, dated October 22nd, 1898, and which is marked "Exhibit 57." (See page 620 this record.)

Q. Are the signatures attached to this document those of Michael Kelley and the Johnson-Wentworth Company?

A. Yes, sir.

Mr. Billson: The exhibit is now offered in evidence.

Mr. Hoyt: You say Michael Kelley signed his name
237 to this contract? A. Yes, sir.

Q. Where was it signed?

A. Signed here at Duluth.

Q. Did you see him write his name?

A. No, I didn't see him.

Q. I understood you to state in your testimony here to the question of Mr. Billson that it was the signature of Michael Kelley?

A. It is the signature of the Johnson-Wentworth Company.

Q. You saw Mr. Kelley sign his name?

A. I don't know as I did.

Mr. Billson:

Q. Have you had other transactions with Mr. Kelley?

A. Yes, sir.

Q. For a number of years? A. Well, yes,—several years.

Q. Are you acquainted with his signature? A. Yes, sir.

Q. I wish you would examine the signature at the foot of the Contract, "Exhibit 57," and also of the annexed document of November 12, 1898, and say whether they are in your judgment the genuine signatures of Mr. Kelley?

A. I think they are.

Q. Was the transaction referred to in that contract negotiated between you personally and Mr. Kelley on the other hand? A. Yes, sir.

Q. And was the contract afterwards performed in the main and logs delivered under it and paid for? A. Yes, sir.

"Exhibit 57" is reoffered in the light of the additional testimony of Mr. Johnson.

Mr. Hoyt: Objected to on the same ground.

Mr. Billson:

Q. What log mark was put upon logs cut under this contract?

A. "H-I" for bark mark and "J-7" for end mark.

238 Morris Thomas, sworn as a witness on behalf of the Complainants, testifies as follows:

By Mr. Billson:

Q. Do you know anything about the cutting of logs from the southeast quarter of the northwest quarter and the northeast quarter of the southwest quarter of section 1, township 54, range 13, in this county, during the winter of 1898-'99?

A. Yes, sir.

Q. How were you connected with the cutting, if at all?

A. I was the contractor; I cut it under contract.

Q. For whom?

A. A man by the name of Howe,—E. S. Howe.

Q. Was all the timber cut that winter? A. Part of it.

Q. Do you know anything about how Mr. Howe became entitled to cut that timber? A. Well, only what he told me.

Q. You didn't see any contract? A. No, sir.

Q. Had there been any cutting on that land prior to your cutting? A. No, sir.

Q. Do you remember the mark that was placed upon the logs that you cut?

A. I don't believe I do; I think it was "J-S" or "F-J."

Q. Were the logs that you cut removed the following spring? A. Yes, sir.

239 Q. Did you have a written contract with Mr. Howe? A. Yes, sir.

Q. You haven't it with you? A. No, sir.

Q. Was the contract for cutting logs from these particular lands? A. Yes, sir, with other lands.

John Smith, being sworn as a witness on behalf of Complainants, testifies as follows:

Mr. Billson:

Q. Mr. Smith, what is your business?

A. I am in the logging business.

Q. How many years have you followed it?

A. About 35 or 40 years.

Q. Did you have anything to do in the winter of 1899-1900 with the cutting of any timber from the southeast quarter of the northwest quarter and the northeast [—] of the southwest quarter of Section 1, Township 54, Range 13, in this county?

A. Yes, sir.

Q. Had there been any cutting upon that tract prior to the time you went there? A. Yes, sir.

Q. Did you finish the cutting of what pine timber remained upon it? A. Yes, sir.

Q. That winter? A. Yes, sir.

Q. Under what circumstances did you do the cutting?

A. Under contract; I was working for William O'Brien of St. Paul.

240 Q. You went there to cut timber upon these particular lands under arrangement with him?

A. Them and other lands, yes, sir.

Q. Were the logs which you cut, in the main, removed that spring? A. Yes, sir.

Q. For your services in cutting and removing them, were you paid by Mr. O'Brien? A. Yes, sir.

Daniel Cameron, being sworn as a witness on behalf of Complainants, testifies as follows:

By Mr. Billson:

Q. Mr. Cameron, what is your age? A. Fifty-six years.

Q. And business? A. Cruising, surveying and scaling.

Q. How many years have you been engaged in those lines of business? A. About thirty-five.

Q. Where is your place of residence?

A. Cloquet, Minnesota.

Q. How many years have you been engaged in those lines of business in this vicinity? A. Twenty-two years.

Q. Have you within the last year or two made any examination of the S. E. 1/4 of the N. W. 1/4 and the N. E. 1/4, of S. W. 1/4, of Section 1, Township 54 north, Range 13 west, in St. Louis County, Minnesota, to determine the extent of pine timber which had been cut from that land? A. I have.

Q. When was it that you made this examination?

A. The sixth day of last April.

241 Q. Were you alone?

A. There was a man with me to assist me.

Q. What was his name? A. Delor Fortin.

Q. Had the logs cut from the timber on that land been generally removed before you got there?

A. Yes, sir, it was all removed.

Q. Were you able to scale or estimate the extent of the timber which was cut?

A. Well, we found the top first, scaled that, measured the length of the trees and made it up in logs. We got it by the rule and then—

Q. According to what rule did you proceed?

A. Scribner's.

Q. Were you generally able to identify the top belonging to the stump?

A. Yes, sir; I don't know that there was a dozen trees that we didn't find the tops for.

Q. Have you any recollection of how long you were engaged there? A. We were seven days on that cutting.

Q. Did you make, each night, a memorandum of the timber which you had scaled during the day?

A. No, not each day; we footed it up just as we went along; that is, we didn't keep each day's work.

Witness is shown a package of cards and is asked whether that is a record of his scale of the timber cut from the land, and answers, A. Yes, sir.

Q. Was that record made there on the ground while you were engaged on the work? A. Yes, sir.

242 Q. I wish you would explain what the figures mean on that card; let me ask you first whether upon the cards which you hold in your hands the printed headings at the head of the several columns have any particular meaning?

A. No, sir, they have not; they are made for scalers to find the logs and put down the lengths. I was only scaling space you see.

Q. So that the column headings have no significance?

A. No, sir.

Q. What do the figures in the several columns mean?

A. That represents the amount that is in the log,—the contents of each log.

Q. That is true, is it, of each of the figures in each of the several columns? A. Yes, sir.

Q. Do the figures represent the actual contents of the several logs in feet or should there be a cipher added to each one? in order to denote the actual contents?

A. Yes, sir, there should be a cipher added.

Q. It is customary to omit the cipher to save time and labor? A. Yes, sir.

Q. Then I understand that as you proceed with your scale you reduce each tree into logs and register on your card the contents of each of those logs? A. Yes, sir.

Q. How much pine timber did you find had been cut from the land? A. There was 938,490 feet.

Q. Is that record which you hold in your hand entirely of your own keeping? A. Yes, sir.

Q. Made by you at the time of the work? A. Yes, sir.

Q. And were all computations upon which you base your total estimate made by yourself?

243 A. My helper measured a few trees and a few tops.

Q. And reported the measurements to you?

A. Yes, sir.

Q. All figuring was done by you? A. Yes, sir.

Q. Did you have any difficulty in locating the lines of the tract with a view to determine what stumps were upon and what were not upon lands which I have described?

A. No, sir; there was timber on three sides of it; I run a line through on the east side south to north from quarter post to quarter post.

Q. The east side was the side on which timbed had been cut? A. Yes, sir,—cut before.

Q. I understand that you could determine where the lines were on the other three sides?

A. Yes; there was timber standing there,—I guess it is standing yet,—and on the north side there was timber, on the west there is timber and there is on the south.

Q. Do you know whether the timber line was in fact the line of this 80 acres on those three sides? A. Yes, sir.

Q. There was no difficulty in determining that?

A. No, sir.

Q. I understand that your method of arriving at the contents of each tree was to measure the diameter of the stump and the diameter of the top and the length of the tree between the stump and the top and allowing for the natural taper of the tree in accordance with Scribner's Rule: I will ask you if that is the approved method of scaling after the logs have been removed?

A. Yes, sir, that is all the rule we have to go by.

Q. How many years have you been engaged in that kind of work?

A. Been doing that work off and on for thirty years.

244 Q. From your experience what have you to say with reference to the accuracy of the scale?

A. We don't get all the timber, I am certain. I have a landing scale, the regular scale and the tree scale, and comparing these I found the landing scale over-ran 380,000 on one quarter; I saw that tested.

Q. From your experience then, you think a scale of this character would be likely to underrun than overrun?

A. Yes, sir.

Cross-Examined

By Mr. Jaques:

Q. You say Mr. Fortin was with you? A. Yes, sir.

Q. How did you work together?

A. He hunted up tops and marked stumps and once in a while he measured trees.

Q. I understand you run a line only on the east side of this 80? A. Yes, sir.

Q. You ran no other line?

A. No, sir; the lines were run on the west side, the north side and the south side. The lines are staked at each corner.

Q. Who run the lines,—you didn't? A. No, sir.

Q. You didn't set the stakes? A. No, sir.

Q. You didn't run those lines yourself?

A. No, sir, I didn't.

Q. You assumed those stakes and marks were reliable?

A. Yes, sir.

Q. This method of scaling that you have from the stump to the top doesn't take into consideration the defective timber at all?

A. Well, that was left in the woods,—defective timber,—that was left; I didn't scale it.

Q. You think that is as accurate as a scale where you have the actual logs? A. No, I don't think it is.

245 Q. The log scale that you get on the whole log on the landing? A. No.

Q. Your comparison was between the method of scaling on the landing and scaling of standing timber?

A. No, on timber cut down.

Q. You were seven days on this "80?" A. Yes, sir.

Q. This is total amount here on the cards? A. Yes, sir.

Q. You have done this scaling a great deal? A. Yes, sir.

Delor Fortin, being sworn as a witness on behalf of Complainants, testifies as follows:

By Mr. Billson:

Q. Where do you live? A. Cloquet.

Q. What is your occupation?

A. No particular trade; I am just working at whatever I can do.

Q. How long have you lived at Cloquet?

A. Three and a half years.

Q. What is your age? A. Thirty-three.

Q. Were you with the last witness, Cameron, at the time he scaled the timber which had been cut from the lands to which he has just referred?

A. I was with him four weeks up in the woods somewhere; I can't say what land.

Q. In what way did you assist him?

246 A. Why, I did the packing when we were moving and I went out to help him a little every day.

Q. In what way did you help him?

A. I'd just go around with the rule and measure stumps and the lengths of the tree tops and used to call off the number, whatever it was.

Q. You made no figures of any kind? A. No, sir.

Q. No figuring? A. No, sir.

Q. Such measurements as you made, did you make correctly? A. Yes, sir.

Q. Did you report them correctly, in all cases, to Mr. Cameron? A. As near as I could, yes, sir.

Q. Was he working right along with you at all times when you were working? A. Yes, right along, side by side.

Q. So that any measurements of stumps of trees or tops he knew what you were doing?

A. Yes, sir; if he didn't hear when I called off the first time, I called them again till he did hear.

Q. Did you undertake to determine in any cases what tops belonged to particular stumps, or was that matter referred to Cameron?

A. I used to try to get the right tops for the right stumps.

Q. What I mean is, did he know in all cases what tops you connected with particular stumps?

A. I don't think he did.

Q. How could you determine what tops belonged to particular stumps?

A. I just looked at the way the tree was lying and I could pretty nearly always [—] where the top was from the stump.

Q. Was there generally any difficulty in determining them?

A. There could be I suppose; I should think a man could get them pretty near right most of the time.

247 Q. Every measurement that you made, as I understand it, you called out instantly to Cameron and he took it down? A. Yes, sir.

Q. Would he be standing at that time where he could see you?

A. He would answer back; he would always answer back when he heard the number.

Q. What proportion of the trees that had been cut from that 80 acres do you think that you personally measured the distance between the stump and the top?

A. I couldn't say that.

Q. What portion of the time were you working with Cameron?

A. From the time I would go out in the morning until I came back at night.

Cross-Examination

By Mr. Jaques:

Q. Did I understand you to say that you were engaged in other duties at the time Mr. Cameron was working?

A. I was some of the time.

Q. What method did you have for measuring the length of trees?

A. I had a rule,—walked around with a four-foot rule.

Q. Just laid your rule down along the length of the tree?

A. Yes, sir.

Q. Did you have a tape-line? A. No, sir.

Q. Did Cameron?

A. I couldn't tell; he might have had one in his pack.

Q. In some places the ground would be covered with brush and it would be somewhat difficult to get accurate measurements? A. Yes, sir, until a man got used to it.

Q. As I understand, you were not accustomed to measure up this? A. No, sir, I am not.

248 Q. It was entirely new to you?

A. Yes, sir, it was.

Q. It would be then rather difficult to get accurate measurements of lengths?

A. No, sir, it is no trade; just go along with a rule and measure it as you go.

Q. When there were obstructions in the way of brush and rough ground how would you measure?

A. Well, whenever the stump was so that I could, I would walk around it.

Q. I mean the length of the tree?

A. When you couldn't walk just where the tree was lying you could just walk around the place the tree was and measure just the same.

Q. You measured the stumps also? A. Yes, sir.

Q. Just laid your rule across? A. Yes, sir.

Q. And you would shout that off to Cameron and he would answer back? A. Yes, sir.

Q. Did he answer the figures? A. No, sir.

Q. He did not call the figures back?

A. I think he did most of the time.

Q. Were you working with him most of the time?

A. Yes, sir.

Q. What did you do beside measuring stumps, &c.,—you did the cooking, I suppose? A. Yes, sir.

Q. As a matter of fact, you were out with him most of the time? A. Yes, sir.

Q. You would go out with him in the morning?

A. Yes, sir.

Q. Were you supposed to stop working before he did in order to do the cooking?

A. We stopped at the same time, most of the time.

Q. In reality you were working with him nearly all the time? A. There were some times that I didn't go out.

249 Q. That would be for half an hour or something like that? A. Yes, sir.

Q. You didn't stay in the camp all day? A. No, sir.

Q. In some circumstances it was quite difficult to find the right top for the stump? A. Sometimes.

Q. What kind of land is it,—hilly? A. Very level land.

Mr. Billson:

The Complainants offer in evidence as their "Exhibit 58," a certified copy of a Land Office Receipt to Malcolm A. McDonald for land in Section 19, Township 54, Range 12. (See page 622 this record.)

Mr. Hoyt: Objected to as incompetent.

Mr. Billson:

Complainants also offer as "Exhibit 59," a certified copy of a Patent to Anna D. Smith for certain lands in Section 19 in the same township and range. (See page 623 this record.)

Mr. Hoyt: Same objection.

Mr. Billson:

Complainants also offer as "Exhibit 60," a certified copy of a Warranty Deed from M. A. McDonald to Michael Kelley for the land in Section 19 covered by the Land Office Receipt just offered. (See page 625 this record.)

Mr. Hoyt: Same objection.

Mr. Billson:

Complainants also offer in evidence as "Exhibit 61," a Warranty Deed from Anna D. Smith and husband to Michael Kelley for the land in Section 19 referred to in the Patent recently offered. (See page 626 this record.)

250 Mr. Billson:

Complainants also offer in evidence as "Exhibit 62," an original Timber Deed, dated August 28th, 1899, from Michael Kelley and wife to the Cloquet Lumber Company, for the pine timber on certain lands in Section 19 above mentioned. (See page 628 this record.)

Daniel Cameron, being recalled as a witness on behalf of Complainants, testifies as follows:

Mr. Billson:

Q. Referring again to the scales which you made of the timber which had been cut on the land referred to in your testimony this morning, state whether or not such measurements as were made by Fortin, either butts or the lengths of trees, were made in your presence so that you could see what measurements he was working at?

A. Yes, sir, I saw him all the time he was at work.

Q. Did you know in each case the tops which by his measurements he was connecting with particular butts?

A. Yes, I was always sure that they were the tops that belonged to the stumps.

Q. You didn't rely upon his judgment? A. No, sir.

Q. How long have you been familiar with the lands in the general vicinity where these lands lie to the northeast of Duluth?

A. I have been through them for the last twenty-two or three years.

Q. Referring to the lands lying in ranges in St. Louis and Lake Counties, Minnesota, and in Ranges from 10 to 16, both inclusive, and in Townships from 52 to 55, have you been familiar with those lands during the period to which you referred? A. Yes, sir.

Q. You had occasion to travel there a great many times? A. Yes, sir.

251 Q. Have you ever seen anything in the nature of mineral deposits upon those lands? A. No, sir.

Q. So far as you know from personal observation or from report, are there any mineral lands in that region?

A. I never saw any and no indications of any.

Q. Are you acquainted, and have you been for a number of years, with the value of stumpage in that region?

A. Yes, sir.

Q. Referring particularly to the 80 acres of which you testified this morning in Section 1, Township 54, Range 13, what in your judgment was the value in the winter of 1898-'99 of the stumpage of the character which stood upon that land and in view of its particular location?

A. Well, it would range from $2.75 to $3.25.

Q. You are referring to market value? A. Yes, sir.

Q. How are the lands situated in regard to water?

A. Fairly close to the river.

Q. To what waters? A. The Cloquet River.

Q. How long a haul was it?

A. Not over one half to a mile and a half.

Q. What was the value of such stumpage a year later, —1889-'00? A. I should think it would be more,—$3.50.

Q. Your figures refer to the value per thousand feet, board measure? A. Yes, sir.

Q. Are you familiar with the lands over in Section 19, Township 54, Range 12?

A. I have been on them several times.

Q. You are acquainted in a general way with the timber?

A. Yes.

Q. What in your judgment was the value of that timber in the winter of 1898-1899?

252 A. About $2 to $2.50 per thousand.

Q. And in the following winter?

A. Probably $2.75; it is not as good quality of timber as on the others.

Cross-Examination

By Mr. Hoyt:

Q. You state in reference to this land that you don't think there is any mineral on it? A. No, I never saw any.

Q. Is that what you testified to, that you didn't see any?

A. Yes, sir.

Q. How much timber or stumpage did you buy in the year 1898? A. I didn't buy any myself.

[A.] Or in 1899?

A. I didn't buy any myself; just what I saw the company buying.

Q. Who did you work for?

A. The Northern Lumber Company.

Q. How long? A. Five years.

Q. In your judgment the market value of timber is what the Northern Lumber Company paid? A. Yes, sir.

Q. Did you work for any others?

A. Cloquet Lumber Company and the Johnson-Wentworth Company.

Q. How did you know what they did?

A. I heard what the paper said.

Q. Don't you know that timber in 1898-1899 on Section 19 was bought for less than $2?

A. No, sir, I don't know it.

Q. You never heard it? A. No, sir.

Q. Didn't the Northern Lumber Company own somewhere there? A. Yes, sir.

Q. Did they pay over $2.00 per thousand?

A. I don't know.

Q. How do you fix the value of that timber?

A. I saw them buy timber other places of about the same quality.

253 Q. But you never gave any examination particularly to this timber on Section 19?

A. I looked over it.

Q. How much?

A. I looked over the west half of the Section.

Q. Who for? A. The Northern Lumber Company.

Q. When? A. Three years ago.

Q. Before it was cut? A. Yes, sir.

Q. What for? A. It was for sale.

Q. Do you remember how much you told the Northern Lumber Company it was worth?

A. No, I don't know as I do.

Q. The fact is, the value of timber is simply hearsay; do you know of any sales in this section? A. No, sir.

Q. You never bought or sold any lands in that vicinity?

A. No, sir.

Cross-Examination

By Mr. Jaques:

Q. Do you know of any sales in that vicinity in the winter of 1898-1899? A. No, sir.

Redirect Examination

By Mr. Billson:

Q. Have you been for a number of years so situated as to be informed in a general way as to transactions concerning timber of this kind in that region and by general information of the prices paid?

Mr. Hoyt: Objected to as incompetent, immaterial and hearsay.

A. I have.

Q. Referring to the question as to whether there are any minerals in that region, you say you have never seen any?

A. No, sir.

Q. Have you heard of any being discovered?

Mr. Hoyt: Objected to as incompetent and hearsay.

254 A. I have not seen any signs of minerals and never heard of any.

Henry Hornby, being sworn as a witness on behalf of the Complainants, testifies as follows:

Direct Examination

By Mr. Billson:

Q. Where do you reside? A. Cloquet.

Q. What is your business?

A. I am connected with the Cloquet Lumber Company.

Q. How long have you been in the lumbering business?

A. Seventeen years.

Q. How long in this vicinity? A. About fifteen years.

Q. Are you familiar, and have you been for several years, with the value of pine stumpage or standing timber in the region northeast of Duluth? A. Yes, sir.

Q. Has your Company received during the last year and a half, any logs from Section 19, Township 54, Range 12?

A. Yes, sir.

Mr. Hoyt: Objected to as fixing descriptions.

(Witness is shown Exhibit 62, a Deed from Michael Kelley and wife to the Cloquet Lumber Company and questioned as follows):

Q. Did you after receiving that Deed from Mr. Kelley cut the timber from that land? A. Yes, sir.

Q. How soon afterwards?

A. We cut this in the winter of 1899-1900;—last winter.

Q. And removed the logs, did you?

255 A. They have all been removed from where we put them, but they are not all gone to the mill yet.

Q. You are acquainted with the value of stumpage through that region? A. I think so.

Q. What in your judgment was the value, the reasonable market value, in the winter of 1898-1899, of stumpage situated on this Section 19, Township 54, Range 12, to which you have referred? A. About $2.50 per thousand.

Q. And in the following winter of 1899-1900, what in your judgment was the fair market value?

A. Worth considerable more,—very nearly a dollar.

Q. That region is contributory to the waters that flow past your mill? A. Yes, sir.

Q. So that you have occasion to keep yourself informed with regard to prices? A. Yes, sir.

Cross-Examination

By Mr. Hoyt:

Q. Can you fix the date when you first went on that land and cut timber? A. No, sir.

Q. Can you approximate it?

A. Why, it was in November or December of 1899?

Q. You had a deed of that land, didn't you? A. Yes, sir.

Q. When you bought that land how much did you give for stumpage? A. I think about $2 when we bought it.

Q. Is your firm connected with the Northern Lumber Company? A. No, sir.

Redirect Examination

By Mr. Billson:

Q. Are you manager of the Cloquet Lumber Company?

A. Assistant Manager.

256 Q. Did you see any of the timber that came from the lands in Section 1, Township 54, Range 13, in the winter of 1898-1899, or the following winter?

A. I saw the logs on the landing.

Q. Which winter was that?

A. In the winter of 1898-1899.

Q. Those were logs which had been cut, were they, from the S. E. 1/4 of the N. W. 1/4 and the N. E. 1/4 of the S. W. 1/4 of Section 9?

A. I couldn't say; we took them off Section 1 and landed them in the Cloquet River.

Q. What in your judgment, during that season, was the fair market value of timber such as you saw cut up in logs?

A. About $3.

Q. How did timber compare with that on Section 19?

A. It is better; better quality.

Q. There would be a corresponding advance in price of that timber in the following winter? A. All timber advanced.

Recross

By Mr. Jaques:

Q. You saw the logs on the landing of the Cloquet River?

A. Yes.

Q. They were landed there by Morris Thomas?

A. It was understood that Morris Thomas had the contract.

Q. Was Howe cutting timber on other sections?

A. I couldn't say.

Q. How did you come to the conclusion that logs were cut on Section 1? A. I had been told so.

Q. Did your people buy any pine in that vicinity that winter?

A. I don't know as we bought any in those sections, but we bought through there.

Q. On 19?

A. Not that winter,—in 1899; we bought what was left.

Q. Your idea was you were giving $2 per thousand?

A. Yes, sir.

Q. How far from Section 1 is Section 19?

257 A. Section 1 is two-thirds of the way across the channel; on Section 19 is more convenient to the lake but logs will come out of Section 1 cheaper on account of the distance to drive.

Q. You don't remember of buying any timber in the vicinity of Section 1? A. Just above there?

Q. How far above? A. On 22, I think, and 24 and 25.

Q. What did you give for that timber?

A. Six Dollars; it is a harder drive and smaller stream, the west branch of the Cloquet.

Q. You didn't buy the stumpage? A. The logs.

Q. That is the way you get all stumpage?

A. Yes; timber costs so much to drive it and to put it in the stream.

By Mr. Hoyt:

Q. You didn't figure that way on the Cloquet River?

A. That is the only way.

Q. You bought the logs, you didn't buy the stumpage?

A. It is the timber.

Q. You didn't buy the stumpage standing on the lands?

A. Part of it we did.

Q. How much did you give for that? A. $3.00.

Q. That is all you know that it bought and sold for up there? A. In that particular place, yes.

258 Morris Thomas Recalled.

By Mr. Billson:

Q. Referring to that 80 acres in Section 1, Township 54, Range 13: The S. E. 1/4 of the N. W. 1/4 and the N. E. 1/4 of the S. W. 1/4 of that section from which you testified you had cut some of the timber two years ago,—by whom were the lines run out around the land at the time you cut?

A. They were finally run by the County Surveyor or Deputy.

Q. Did you make an examination to satisfy yourself that they were correct?

A. I had run around the lines myself; I thought they were correct; I suppose they were more nearly right than I was.

Q. Did the lines of the cuttings as finally made follow substantially the lines which you had made?

A. Not far from it.

Q. How much variation was there between your lines and his? A. A little difference in the length.

Q. How much would be a fair statement of the maximum difference?

A. 140 or about 150 feet; I made it that much bigger than it really was.

Q. But the cutting followed the County Surveyor's lines?

A. Yes, sir.

Q. How many years have you had experience in following government lines? A. About thirty or thirty-five years.

Q. What in your judgment was the fair market value in the winter of 1898-1899 at the time you cut that timber standing? A. I should call it $2.

Q. And what in your judgment was the value of similar stumpage a year ago?

259 A. It would be higher; about fifty cents or a dollar higher.

Q. What proportion of the timber on that 80 acres was cut by you that winter two years ago?

A. Well, I cut the greater part of it; I think I cut about one million feet of it.

Q. What proportion was that of the whole?

A. There was between 400,000 or 500,000 feet left on it.

Q. So that you cut about two-thirds, in your judgment?

A. Yes.

Cross-Examination

By Mr. Jaques:

Q. You didn't scale it?

A. Scaled it every day; we kept track of it day by day.

Q. You cut on different pieces?

A. On the same day on different forties.

Q. Where was it scaled?

A. The logs were piled on the same place; they were scaled as fast as we went along; the greater part of them was scaled in the woods.

Q. You are speaking now of your general opinion, not records of any scaling?

A. No, it would not be as exact as a record, but considering what we hauled every day and how many days we were on a piece of land, we could keep track of it.

Q. Did you keep a record? A. Oh, a memorandum.

Q. This is your general idea? A. In a general way, yes.

Q. You wouldn't buy yourself on that basis?
A. I would estimate closer.

Redirect Examination

By Mr. Billson:
Q. How long a haul was it?
A. A very short haul; from three-fourths of a mile to a mile; on that special "80" it was about three-fourths of a mile.

P. J. Campbell, being sworn as a witness on behalf of
260 the Complainants, testifies as follows:

By Mr. Billson:
Q. Where do you reside? A. In Duluth here.
Q. What is you- age? A. Thirty-three years.
Q. And your business? [—] Logging contracting.
Q. How many years have you been engaged in the logging business? A. About four years,—somewhere around there.
Q. Did you cut, in the winter of 1898-'99, any timber from lands in Section 19, Township 54, Range 12, St. Louis County?
A. Yes, sir.
Q. Can you state from what part of this section you cut this timber? A. I don't just remember.
Q. Can you by referring to a diagram? A. Yes, sir.

(Witness is handed a diagram.)

Q. Did you cut timber two years ago, from the S. E. 1/4 of the N. E. 1-4, the N. E. 1-4 of the S. E. 1-4 the S. E. 1-4 of the S. W. 1-4, and Lot 5, or the west half of the S. W. 1-4?
A. Yes, sir, I did.
Q. For whom did you cut the timber?
A. Part of it for the Cloquet Lumber Company.
Q. Was that two years ago? A. A year ago.
Q. But the cutting of two years ago, for whom was that?
A. The timber was for the Johnson-Wentworth Lumber Company.
Q. And was marked "H-I?" A. Yes, sir.
261 Q. Who contracted with you to cut the timber?
A. The Duluth Logging & Contracting Company.
Mr. Hoyt: Is that in writing? A. Yes, sir.

By Mr. Billson:
Q. Who negotiated the contract with you on behalf of that Company?
A. I have just forgotten now; Campbell himself, I think; I have forgotten whether Williamson was there or not.
Q. Did they have a contract with anybody else?
A. I don't remember, but I think they had.
Q. Didn't you see their contract?

A. Not that I remember.

Q. What proportion of the timber on those tracts did you cut and remove that first winter?

A. Well, it was all cut with the exception of two little pieces: one was on Lot 5 and the other on the S. E. 1/4 of the N. E. 1/4.

Q. Were those the two pieces on which you cut the timber the following year for the Cloquet Lumber Company?

A. Yes, sir.

Q. Might that have been on the S. W. 1/4 of the N. E. 1/4 instead of the S. E. 1/4 of the N. E. 1/4?

A. (On examining diagram witness answers that it was on the S. W. 1/4 of the N. E. 1/4.)

Q. How much was there, approximately, in these two bunches of timber?

Mr. Hoyt: Objected to as incompetent.

A. I don't remember how much was on it.

Cross-Examined

By Mr. Holt:

Q. What year did you say you cut this?

A. Part of it I cut just a year ago.

Q. You cut the first at what time?

A. In November, 1898.

Q. And the other cutting you made was for Mr. Hornby, was it? A. Yes, sir.

262 Q. Were you working for yourself? A. Yes, sir.

Q. Cut the timber on your own account?

A. Yes, sir.

John C. Campbell, being sworn as a witness on the part of Complainants, testifies as follows:

By Mr. Billson:

Q. Are you a brother of the last witness? A. Yes, sir.

Q. Were you in any way connected with the cutting of the timber on the lands to which he has referred to? A. Yes, sir.

Q. In what way?

A. The Duluth Logging and Contracting Company had a contract from Michael Kelley for the timber on those lands.

Q. Do you mean they had a contract by virtue of which they were to cut the timber for him under contract?

Mr. Hoyt: Objected to as incompetent; contract is in writing.

A. Yes, sir.

Q. Have you a copy with you? A. No, sir.

Q. Who paid the Duluth Logging and Contracting Company for their work on that land? A. Michael Kelley.

Q. You had nothing to do with the cutting a year ago for the Cloquet Lumber Company? A. No, sir.

Q. How were you related to the Duluth Logging & Contracting Company? A. I was Vice-President of the Company.

Patrick Reilly, being sworn as a witness on the part
263 of Complainants, testifies as follows:

Mr. Billson:

Q. What is your business? A. Well, I cruise a little.

Q. How many years have you been connected with cruising or the logging business? A. About 35 years; since 1866.

Q. Where do you reside? A. Here in Duluth?

Q. I ask you whether in the winter of 1898-'99 you had anything to do with the cutting of logs from Section 19, Township 54, Range 12?

A. No, I had nothing to do with the cutting.

Q. Did you have anything to do with the running of lines around any portion of that section? A. Yes, sir.

Q. (Witness is shown a diagram of the township in question and is asked whether he ran any of the lines around the S. E. 1/4 of the N. E. 1/4 and the N. E. 1/4 of the S. E. 1/4 of Section 19)?

A. I run three lines; one on the east, one on the north and one on the south.

Q. Did the cutting which took place on that "80" during that season follow the lines which you ran out? A. Yes, sir.

Q. You say that you have had experience in the running of lines of that description for how many years?

A. I should think about twenty-five or six years.

Q. Referring to the west 1/2 of S. W. 1/4, or Lot 5, and the S. E. 1/4 of S. W. 1/4, did you run any lines around those tracts, or either of them at that time? A. Yes, sir.

Q. What lines did you run?

A. I cut out the S. E. 1/4 and S. W. 1/4, or Lot 5, and I also run another line up north cutting off the S. E. 1/4 of the N. W. 1/4 and the N. E. 1/4 of the S. W. 1/4.

264 Q. Do I understand that you ran that south line of the section along the west half of the section?

A. Those lines had been run by the surveyor years ago?

Q. You located them and followed them? A. Yes, sir.

Q. How about the westerly line of the township up as far as the lake? A. It was run before.

Q. Was there any difficulty in locating it? A. No, sir.

Q. Were you recently upon those lands in company with Mr. Seely? A. Yes, sir.

Q. What part did you take in the examination of the timber which had been cut from the land?

A. I helped them measure the same as the rest.

Q. You measured a portion of the stumps and some of the tops? A. Yes, sir.

Q. And some of the lengths? A. Yes, sir.

Q. And did you make any entries in the records that were kept? A. A little,—not a great deal.

Q. Such as you made, you made accurately? A. Yes, sir.

Q. Did you assist in making any computations as to the contents of the trees? A. A little,—not much.

Q. In estimating the contents what rule did you follow?

A. Well, Murphy and Seely got up a rule and I followed that.

Q. Such figures as you made in computations were accurately made, assuming the accuracy of the table which they gave you? A. Yes, sir.

Cross-Examination

By Mr. Hoyt:

Q. You went up twice on that land—what did you go up there first for? A. I went to survey the land.

Q. For whom? A. For Michael Kelley.

265 Q. What did you use,—compass and chain?

A. Yes, sir.

Q. Who went with you?

A. I had two men with me in the camp working for me.

Q. Did you carry the compass? A. Yes, sir.

Q. They assisted in carrying the chain?

A. Well, we used to cut our line out—and chain it afterwards.

Q. What did you go up the second time for?

A. For the surveyor-general here, Mr. Brady, to measure the same as the rest.

Q. You and Brady went up to measure stumpage that was cut? A. I went up for him.

Q. Who went with you?

A. Murphy and Seely—no—Mr. Seely and Mr. Hogan.

Q. How did you proceed to estimate that timber?

A. We measured the stumps.

Q. What part of the descriptions did you first go on,—how many descriptions did you have,—four?

A. I had more than that.

Q. The S. E. 1/4 of the N. E. 1/4,—what part of that did you go on?

A. On the northwest corner of the S. E. 1/4 of the N. E. 1/4.

Q. In what direction did you go from there? A. East.

Q. Did you have a chain there? A. No, sir.

Q. Did you make the figures, the measurements?

A. Mr. Murphy did.

Q. What did Seely do?

A. He didn't work with us at all hardly. He was on the same "forty," but we worked separately.

Q. You started on the northwest corner of this "forty," and in what direction did you go? A. East.

266 Q. How big a space did you take to count stumps, going east? A. We didn't count, we measured them.

Q. Can't you tell how many stumps there were?

A. I could not, no.

Q. What did you have, a rule and a tape-line?

A. Yes, sir.

Q. How far did you measure from the stump to where the tree fell? A. About two to two-and-half feet.

Q. Could you see where the tree fell every time?

A. No, sir.

Q. Now, when you went along, where did you commence—from the butt or the top? A. Generally, the butt.

Q. The length of the tree? A. The butt.

Q. What kind of a rule did you have? A. Scribner's.

Q. I mean, was it a two or a four-foot rule?

A. A four foot rule.

Q. And then you measured along where the log went?

A. Yes, sir.

Q. And then when you came to the top you measured the diameter of the top and the diameter of the butt and then you calculated the number of feet in a log by the number of logs cut? A. Yes.

Q. How did you know you didn't measure a log a second time?

A. There was about nine inches of snow on the ground and we took every stump and shoved the snow off.

Q. What time of year was this?

A. We just came back a few days ago.

Q. How much snow was on the ground?

A. From nine to ten inches.

Q. You couldn't tell where a tree fell with the snow on the ground?

A. Some of them we could and some of them we couldn't.

Q. How long did it take you?

A. We were over there eighteen or nineteen days.

Q. Three of you up there nineteen days? A. Five of us.

Q. How long were you on this "forty," were you there a week?

A. I couldn't tell you; we didn't work them all at once.

Q. Is there any difference, in the Doyle and the
267 Scribner rules? A. I guess there is.

Q. Do you know?

A. Doyle's is used on small logs.

Q. How are these, large or small logs? A. Small.

Q. You didn't use Doyle's for that purpose?

A. I don't know; I took the rule I got.

Q. Who made the memorandum as to the length of logs?

A. Mr. Murphy and Mr. Seely.

Q. Did you make any of them? A. Yes, sir.

Q. Who did you call off for? A. Murphy.

Q. And would he call back the number of feet you said?

A. No, we gave the number of inches of the stump.

Q. You didn't figure up 12 inches on the top or two feet on the butt? A. No, sir.

Q. You would measure the butt and call him the diameter and he would answer back the same figures and you proceeded in that way of measuring? A. Yes, sir.

Henry Seely, being sworn as a witness on behalf of Complainants, testifies as follows:

By Mr. Billson:

Q. Where do you reside? A. Stillwater.

Q. What is your age? A. Forty-nine.

Q. And your business?

A. Surveyor, and timber estimater or scaler.

Q. How many years have you been engaged in that line of business? A. Twenty years.

268 Q. How many years have you been familiar with these regions lying northeast of Duluth?

A. For twenty years.

Q. Have you been for a number of years familiar with the value of stumpage in that region?

A. Yes; that is, I keep posted by general report.

Q. You have not been dealing yourself? A. No, sir.

Q. Have you been so situated as to be likely to hear of transactions taking place? A. Yes, sir.

Q. Has this region around here occupied your attention?

A. A part of the time; in twenty years, a good part of the time.

Q. You have recently made an examination of the timber cut from the lands in Section 19, Township 54, Range 12, and the 80 acres in Section 1, Township 54, Range 13, concerning which the witnesses have testified here to-day?

A. Not any in Section 1.

Q. You have in Section 19, but not in Section 1?

A. In Section 19, yes, sir.

Q. Are you familiar with Section 1-54-13?

A. I am partly familiar with it; I never run any lines through it.

Q. You know in a general way the character of the timber upon it? A. Yes, sir.

Q. What in your judgment, say two years ago, was the fair market value of the timber which then stood upon these lands in Section 19, which have been referred to by other witnesses?

Mr. Hoyt: Objected to on the ground that it is incompetent and that the witness does not show that he has any knowledge.

A. About $2.50 per thousand feet.

Q. What was the value of such timber so located about a year ago?

269 A. It would be worth $3, I should judge.

Q. How, in your judgment, did the value of the timber upon Section 1-54-13 compare with the value of that to which you have referred in Section 19?

A. Section 1 should be worth one-half dollar a thousand more according to the quality of the timber and the situation.

Q. How are both of these tracts situated with reference to accessibility to water?

A. They are both favorable; both short hauls; about three-fourths of a mile in Section 1.

Q. In Section 19? A. From the shore back a mile.

Cross-Examination

By Mr. Jaques:

Q. Had you been buying any timber in 1898-1899 in that vicinity? A. No, sir.

Q. Neither for yourself nor for anyone else?

A. I have made offers for other parties.

[—] In the vicinity of Section 1?

A. Not right near there, but in other parts of the country here that were not located as well as in Section 1.

Q. Do you know of any deals in the vicinity of Section 1 in 1898-'99? A. No, sir.

Q. How about the year 1899-1900, do you know of any sales in that vicinity?

A. I may know of the sales, but cannot say what was given for the timber.

Q. Who did you represent,—different people or one company, from 1898,—for the last two years?

A. For the Northern Lumber Company, partly, and John A. Humbird part of the time.

Q. When was it that you made this estimate in Section 19? A. I just came back.

270 Q. Was that the first time that you went up in that section of the country? A. No, sir.

Q. When had you been before—about two years ago?

A. I have been there eighteen or twenty times within the last two years in Section 19, and in that section of the country, frequently, within the last two years.

Q. But you don't recollect any sales there in the last year? A. Not to my knowledge, the prices given.

Q. And your valuation is based upon your general idea of values, not on any knowledge of sales?

A. On my knowledge of offers that have been made.

Q. I should judge the basis of your valuation is a general knowledge of pine locations, etc., and it is not based so much on market value and actual transactions that you know of going through?

A. The market value would be what I would base value of stumpage on, certainly; what I considered the market value of the timber.

Q. You don't know of the prices paid in transactions in this vicinity?

A. I know what is reported and generally paid for timber in this section of the country.

Q. From general report? A. Yes, sir.

Q. When you hear a general report of a sale of this kind you find most of the time that when a deal goes through and the timber is actually paid for, that the price was considerably lower than general report made it.

A. I have a good idea of the value of timber, standing in this country; I have made frequent offers and generally know what it can be bought for.

Q. Timber is generally lower with the buyer than it
271 is with the seller according to the different reports of buyers and sellers, usually?

A. I cannot say as to that.

Cross-Examination.

By Mr. Hoyt:

Q. Who did you go up on this land for—in whose employ?

A. For Mr. Brady, the Surveyor General.

Q. Were you employed by the Surveyor General?

A. Yes, sir.

Q. You have been up to Cloquet, have you? A. Yes, sir.

Q. Quite frequently? A. Yes, sir.

Q. Working for the Northern Lumber Company?

A. Yes, sir.

Q. Suppose that you owned a tract of land and you couldn't sell it to either of those firms, the Northern Lumber Company and the Johnson-Wentworth Company, and you had to come down the Cloquet River, what in your opinion was the value of the Stumpage: I am speaking of Section 19—that timber you say is worth $2,— if you couldn't sell it to those firms up there, and you owned it to day, what would it be worth?

A. $2.50.

Q. Where would you take it?

A. To some other one that would buy.

Q. When would it be moved—you know it wouldn't be worth anything up there?

A. I know a man who would buy.

Q. What, did you in 1898? A. Yes.

Q. What is his name? A. William O'Brien.

Q. He would have bought that putting the logs in the river? A. He did buy through this country?

Q. In your opinion the stumpage would be of equal value if it didn't go down the Cloquet first?

A. I believe the stumpage was worth that much money there anyway.

272 Q. When did you see this timber when standing? A. At different times.

Q. I call your attention to these particular descriptions of land? A. I estimated those particular descriptions.

Q. When the timber was standing? A. Yes, sir.

By Mr. Jaques:

Q. For whom on Section 19?

A. For the Northern Pacific and for Weyerhaeuser.

Q. Do you remember the amount of timber you estimated?

A. I don't remember; I estimated it in 1883 for the Northern Pacific; I estimated it some eight years ago for Sauntry of Stillwater, part of that section, and I have estimated it since that for the Northern Lumber Company.

Q. Since January, 1899? A. Yes, sir.

Q. You have never estimated on Section 1?

A. I have, years ago, on Section 1.

Q. For the railroad? A. Yes, sir, in about 1883.

Redirect Examination

By Mr. Billson:

Q. Referring to the lands, generally, lying in St. Louis and Lake Counties, in Ranges 10, 11, 12, 13, 14, 15, 16, and Townships 52 to 55, both inclusive, have you ever in your examination of lands in that region, discovered any minerals?

Mr. Hoyt: Objected to as incompetent and immaterial.

A. No, sir.

Q. Have you ever seen or heard of mineral lands located in those townships?

Mr. Hoyt: Objected to as incompetent and hearsay.

A. I have not.

273 Q. I understand you to say that you have for a great many years frequently traversed that region?

A. Yes, sir.

Q. Do you know of anybody better acquainted with lands that you are?

Mr. Hoyt: Objected to as incompetent.

A. I don't think I do.

Q. Have you recently made a scale of the timber cut from the S. E. ¼ of the N. E. ¼, and the N. E. ¼ of the S. E. ¼, the S. E. ¼ of the S. W. ¼, and Lot 5, or the west ½ of the S. W. ¼, of Section 19, Township 54, Range 12? A. I have.

Q. Did you do it under the authroity of the Surveyor of Logs in this district, as a deputy? A. Yes, sir.

Q. Surveyor-General Brady? A. Yes, sir.

Q. Who did you have with you to assist you?

A. Mr. Coburn, my son, Reilly and Murphy,—five of us.

Q. Mr. Reilly has testified to his having run lines at one time around the north, east and south sides of the 80 acres in Section 19, described as the S. E. ¼ of the N. E. ¼ and the N. E. ¼ of the S. E. ¼, did you run the line on the west side of that "80"? A. Yes, sir.

Q. Did you find any difficulty in locating the line?

A. No, sir, I didn't.

Q. Did you find any difficulty in locating the south line of the section, being the south line of the S. E. ¼ of the S. W. ¼ and Lot 5 of the section?

A. No difficulty at all in following Reilly's line that he had drawn to respot the old survey.

Q. The old survey was plainly blazed? A. Yes, sir.

Q. How about the original government line of the west side of Lot 5? A. Very plainly blazed.

274 Q. Did you locate the line on the east side of the

Q. And on the south side of that "40"? A. Yes, sir.

Q. And on the south side of that "40?" A. Yes, sir.

Q. Having thus located the lines on those tracts did you make a scale of the timber which had been cut? A. Yes, sir.

Q. Were you able to any considerable extent to determine the tops pertaining to particular stumps?

A. Very few stumps.

Q. In the majority of cases you were unable to do so?

A. They were burned so; the tops were eventually burned up.

Q. And the snow on the ground added to the difficulty?

A. Yes, sir; in a few cases we got tops.

Q. How did you make your scale?

A. By measuring the size of the stumps, and taking it from former experience in scaling in this vicinity where I had a chance to get at the stump and top I made a table to find the contents of the tree according to the different sizes of the stumps.

Q. Was there considerable timber still standing on the tracts adjacent? A. Yes, sir, right alongside.

Q. And you were familiar with timber on this tract from former experience? A. Yes, sir.

Q. And you had recently occasion to make a scale of timber in the same general neighborhood?

A. Within the same country and the same class of timber.

Q. From these observations and experience you estimated the contents of that tract with the given diameter of the stump?

A. By taking the size of the stump I would make the number of feet there was in the tree.

Q. Have you in your hands a copy of the table or rule which you followed in making that estimate? A. Yes, sir.

275 (The witness produces the table to which he refers, which is marked "Exhibit 63" and same is offered in evidence.) (See page 629 this record.)

Q. Referring to the table which you produce, I ask you whether the numbers in the first columns under the heading of "stumps" indicate the number of inches of diameter?

A. Yes, sir, across the stump.

Q. And the figures in the second column indicate the number of feet in the tree, board measure? A. Yes, sir.

Mr. Hoyt: Is this yours or Scribner's?

A. I formed it.

Mr. Billson:

Q. Did anybody assist you in making measurements of these stumps? A. Yes, sir.

Q. Did all of the gentlemen assist whose names you have given?

A. Yes, sir, more or less; Mr. Reilly and Mr. Murphy worked together partly.

Q. And to avoid counting the same stump more than once what course did you pursue?

A. We wiped the snow off of the stumps and used the snow as a mark and marked each stump that way as we measured.

Q. Who kept the record of the measurements as it was given in the field?

A. I did partly and Mr. Murphy for the other side, making two crews.

Q. Did Mr. Murphy and Mr. Reilly work together?

A. Yes, sir, partly.

[A.] And you and your son and Mr. Cockburn?

A. Yes, sir.

Q. Were any of these gentlemen deputized by the surveyor-general, beside yourself?

A. Mr. Murphy and Mr. Reilly were.

Q. Did you keep a record of each stump measurement as made during each day? A. Yes, sir.

Q. And each night did you transcribe that field record into a permanent record for filing in the office of the sur-
276 veyor-general? A. Yes, sir.

Q. I understand that after the diameter of any stump was ascertained its contents in feet were determined by reference to this table which you have prepared?

A. Yes, sir.

Q. I will ask you whether this table, in your judgment, is a safe, conservative and just estimate for determining contents of trees of these different diameters? A. It is.

Q. If it errs on either side, would it be in the way of excess or deficiency?

A. Well, I got it as near as I possibly could, taking the average trees that I have already scaled at different times.

Q. Well, what was the result of the scale which you made of the timber which had been cut on that land?

A. The amount of timber that was cut there?

Q. How much timber did you find to be cut from the land in Section 19 described as the S. E. 1-4 of the N. E. 1-4 and the N. E. 1-4 of the S. E. 1-4, the S. E. 1-4 of the S. W. 1-4, and Lot 5 or the west half of the S. W. 1-4? A. 2,948,230 feet.

Q. What is that from?

A. This land in Section 19; those four descriptions you gave me.

Cross-Examination

By Mr. Hoyt:

Q. How long did you say you have been engaged in this business of estimating trespass?

A. I have followed it more or less for twenty years.

Q. Did you ever hear of a man by the name of Scribner?

A. I don't know the gentleman.

Q. I didn't think you did, because he's dead.

277 Q. Did you ever hear of his rule? A. No, sir.

Q. You know he has a rule for scaling the number of feet in a tree?

A. I never saw a rule giving the number of feet in a tree; I have seen it giving the number of feet in a log.

Q. There is a rule, isn't there, for measuring the stump?

A. There is a rule for measuring from the top.

Q. And does your rule differ from his at all?

A. He gives a rule to measure a log, the contents of each log separately.

Q. Where there has been trespass upon land and the logs have been taken away?

A. I never saw a rule for logs that had been taken away, unless they had been scaled by his rule.

Q. Do you know of Doyle's rule? A. Yes, sir.

Q. How does it differ?

A. I have never used it and don't know anything about it.

Q. How long have you been using this table of yours?

A. I have used it whenever I have scaled trespass and couldn't find the top of the tree.

Q. How long? A. More or less, for fifteen years.

Q. I understood that on this land here you have been testifying to there has been a fire, was it all over the land—all over the cutting?

A. Yes, all over the part we had reference to there.

Q. Did it burn the end of the stump—all of them?

A. Yes, sir.

Q. Well, you couldn't tell whether the tree was cut within one, two or three years? A. Yes, sir.

Q. When was the last time you went there and saw this timber standing on this land?

A. I couldn't rightly tell the date. About three
278 years ago.

Q. When you were there the timber was green?

A. Yes, sir.

Q. No cuttings? A. No, sir.

Q. Were you there estimating?

A. Not that particular time; I didn't estimate that particular section.

Q. When you were there you passed through it, you didn't give it any particular examination? A. No, sir.

Q. When did you examine it before that—you estimated it for the Northern Pacific in 1883 and for some one else, when?

A. Probably about ten years since.

Q. You have not been then on that land to give it a careful examination before you went on it last for ten years?

A. Yes, sir, I have been over it.

Q. All over it,—when was it? A. Inside of two years.

Q. When did you see it when the timber was standing?

A. About three years.

Q. Were you there and saw the timber was cut?

A. Yes, sir.

Q. You couldn't tell that every stump you measured were stumps cut in one, two or three years?

A. I know it was cut in the last three years.

Q. How do you know it,—you say there was a fire and you didn't know whether it was cut two or three years ago?

A. Yes, sir, I could tell by the bark on the side of the stump.

Q. Did you look at the bark?

[—] Yes, sir, and we scaled no old stumps.

Q. Did you allow in this scale for any defective timber?

A. No, sir, couldn't.

Q. Counted it all good? If there were any punky or trees that had rotted, didn't you allow for any defect?

A. No, sir.

279 Q. You went up to examine this timber as a deputy surveyor general, but in reality for the complainants in this case? A. I went up for the surveyor-general.

Q. But you went up for the complainants?

A. I suppose that they paid the expenses.

J. H. Coburn, being sworn as a witness on behalf of Complainants testifies as follows:

By Mr. Billson:

Q. Are you one of the gentlemen who went with Mr. Seely to make a scale of timber to which he has referred in his testimony? A. Yes, sir.

Q. Upon Section 19-54-12? A. I couldn't say where.

Q. You didn't undertake to locate the lands? You simply assisted to make the scale where Seely told you to go to work?

A. Yes, sir.

Q. In what part of the work did you assist?

A. Measures stumps and tops.

Q. Now all the work that you did in connection with that scale in measuring, or counting, or making entries, was done accurately and honestly? A. Yes, sir, I think so.

Q. And any measurements that you made was accurately reported to Mr. Seely? A. Yes, sir.

Cross-Examination

By Mr. Hoyt:

Q. How many tops did you find?

A. I couldn't tell; the books would tell.

Q. You didn't make those, did you? A. No, sir.

Q. Did you make any memorandum at all?

A. No, sir.

Q. Who did, Seely? A. Yes, sir.

Q. You didn't figure the number of trees, you simply carried a rule and measured the top? A. Yes, sir.

280 Q. How long were you there?

A. About three weeks.

Q. How many were with you?

A. There were five of us, Reilly, Seely, Murphy, Mr. Seely's son and myself.

Frank Seely, being sworn as a witness on the part of Complainants, testifies as follows:

Direct Examination

By Mr. Billson:

Q. Are you the son of the witness next before the last?

A. Yes.

Q. Were you with your father in making the scale of timber cut from Section 19, to which he has referred? A. Yes, sir.

Q. In what part of the work did you assist?

Q. Measuring stumps, tops and lengths.

Q. Were all the measurements accurately and honestly made by you? A. Yes, sir.

Q. And they were accurately reported to your father?

A. Yes, sir.

Q. Did you take any part in making any entries of computations in the memorandum books?

A. I made a copy of what they read to me?

Q. Did you do that work accurately and truly?

A. Yes, sir.

Cross-Examination

By Mr. Hoyt:

Q. Where was Reilly when you were doing this work?

A. He was with Mr. Murphy.

281 Jerry Murphy, being sworn as a witness on behalf of Complainants, testifies as follows:

Direct Examination

By Mr. Billson:

Q. Were you recently deputized by the Surveyor-General of Logs of this district to assist in making the scale of timber cut from Section 19, Township 54, Range 12? A. Yes, sir.

Q. Were you present with Seely and the other gentlemen who have testified here, during that work? A. Yes, sir.

Q. What part did you take?

A. Well, I took part in all parts of the work; measuring stumps, keeping a record of the day's work, and then I copied into the books at night,—the surveyor-general's book.

Q. Was all of the work you did by way of measuring, or entries, or copying, honestly and accurately done? A. Yes, sir.

Q. What, if any, experience have you had in scaling logs?

A. I have scaled for two years.

Q. Where? A. Between Ashland and Ironwood.

Cross-Examination

By Mr. Hoyt:

Q. It doesn't require much experience to take a rule and measure the stumps, does it?

A. No, sir, but there was more than that to be done.

Q. What was there?

A. Well, we had to find the top and the length of the tree and then find how many feet there were in that tree.

Q. Did you do that? A. Yes, sir.

Q. By this Seely's rule? A. Not when I found tops.

Q. How did you do when you found tops?

A. I used Scribner's rule.

Q. What is the difference between the two?

A. I don't know as there is much difference.

282 Q. Did you ever study it,—give us the difference.

A. Well, it is a little less than Scribner's Rule.

Q. Did you ever see the Doyle Rule?

A. Don't know anything about it.

Q. Then you figured by Scribner's Rule?

A. I figured by Scribner's when we had tops and where I didn't have tops I used this table of Seely's.

Q. How much do you figure you scaled of this 2,948,230 feet? A. I presume I figured about one-half of it.

Q. How much of that was by Scribner's Rule?

A. None of it by Scribner's only where we had tops.

Q. How many feet was that?

A. It would be pretty hard to tell.

Q. Did you allow under Scribner's Rule for any defects?

A. No.

Q. You measured the stumps or did you call off?

A. I called with Seely,—we worked together.

Q. When you went into camp you gave it to Seely?

A. No, sir, I put it on those books myself.

Q. Did you put it on one book alone?

A. On two books.

Q. Did Seely and you use each one?

A. No, we kept on an "80" or "40" together, so that one of us was copying or that one might be adding up.

Q. So you didn't go through one "40" and Seely another "40" separately? A: No, sir.

283 Mr. Billson:

Complainants offer in evidence a scale-bill under the hand and seal of the Surveyor-General of Logs and Lumber for this District, of the scale of logs referred to in the testimony of Seely and the other witnesses just sworn, and same is marked "Exhibit 64." (See page 630 this record.)

Mr. Hoyt:

Same objection as incompetent and immaterial.

Mr. Billson:

From the volume published at the Government Printing Office in 1884, under the authority of law, entitled "The Public Domain," Complainants offer in evidence the circular letter and regulations referring to the adjustment of railroad grants as found on pages 935 to 947, both inclusive, down to the blue mark near the middle of page 947.

It is stipulated that the book in question is one purported to be published under the authority of law and that the pages referred to may be cut out and received in evidence as an exhibit and marked "Exhibit 65." (See page 631 this record.)

Mr. Hoyt:

Objected to as incompetent, irrelevant, immaterial and impertinent.

It is stipulated between counsel for the Complainants and counsel for all of the parties who have appeared and answered, that the amount in dispute between the Complainants and each of the answering defendants, exceeds the sum of Two Thousand Dollars exclusive of interest and cost.

284 Defendants' Testimony.

Deposition of William W. Burke, taken at Washington, D. C., Mch. 26th, 1901, and filed April 18th, 1901.

John A. Humbird and Frederick Weyerhaeuser, Complainants,
vs. In Equity.
Waldo A. Avery et al., Defendants.

District of Columbia—ss.

Examination of William Burke, a witness on behalf of the defendants, taken at the Pacific Building, Nos. 622-624 "F" Street, Northwest, in the City of Washington, in the District of Columbia, before E. L. White, a Notary Public in and for the District of Columbia, under sections 863, 864 and 865 of the Revised Statutes of the United States and the 67th Rule in Equity, as amended, pursuant to the notice attached hereto and returned herewith.

Present: H. H. Hoyt, Esquire, and S. H. Moer, Esquire, on behalf of the defendants for whom they have respectively appeared; and William W. Billson, Esquire, of Billson, Congdon and Dickinson, Esquires, and James B. Kerr, Esquire, on behalf of the Complainants.

By request of parties, it is ordered that these depositions be taken by question and answer.

William W. Burke was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

By Mr. Moer:

Q. Mr. Burke, what is your age?
A. Sixty-five years last January.
285 Q. What is your present business?
A. Practicing before the Land Office.
Q. How long have you been engaged in practice before the Land Office? A. Since 1884.
Q. Have you been practicing in Washington?
A. Yes, sir.
Q. Have you ever held any clerical position in the Land Department? A. Yes, sir.
Q. What? A. Clerk and special agent in the Land Office.
Q. For how long a time?
A. From 1872 until 1880, as a clerk; as special agent from 1880 until, I think, some time in 1884.
Q. In the course of your profession as a Land Lawyer, and as clerk and special agent, have you had occasion to familiarize yourself with the various books kept in the Department?
A. I have.
Q. Do you know their purpose and use? A. Yes, sir.
Q. And are you able, by an examination of the various books in the Land Office, to determine the present condition of any particular piece or tract of land, as shown by the records? A. By the tract-books, do you mean?
Q. Yes. A. Yes, sir.
Q. Or any other books necessary?
A. Any other books necessary.
Q. What books particularly are used in trying to ascertain the status of any particular piece of land?
286 A. The tract-books.
Q. And what is that book?
A. It is an entry of all selections, entries, for the disposal of any lands.
Q. Belonging to the United States?
A. Yes; belonging to the United States.

Q. Have you made any examination recently of the tract-books in the Land Department in order to ascertain the condition of certain lands located within the first and second indemnity limits of the Northern Pacific Railroad in the State of Minnesota? A. Yes, sir.

Q. When did you start on that work?

A. I think it was January 24th, that is, examining the tract-books, the time is noted there.

Q. And do you recall at what time you finished? You can look at these and tell, if your notes show?

A. February 23, 1901.

Q. I mean as to all the lists, when you completed your work, including all you have done? A. March 18, 1901.

Q. Then from January 24th, I understand, until March 18th, was the time consumed? A. Yes, sir.

(It is stipulated that to any of the testimony of this witness, or to the exhibits introduced in connection therewith, objections may be taken at the hearing of the cause upon grounds of irrelevancy or immateriality, with like effect as though interposed at the time of the offer of such testimony.)

By Mr. Moer:

Q. The witness is shown defendants' Washington 287 Exhibit A, and asked to explain what it is.

A. It is a list to show the status of certain tracts of land mentioned in the parts of sections in the first indemnity of the Northern Pacific Railroad, from range 20, 4th principal meridian, to the Red River of the North, south of the road.

Q. Who made that list? A. I did, sir.

Q. In what way did you make it?

A. By examining the tract-books as to the status of all the lands in the odd section.

Q. In the making of that list, did you examine the books in the Land Department to ascertain all the entries that were contained on such books affecting the land? A. I did, sir.

Q. Did you make your own notes? A. I did, sir.

Q. And from the notes so made, have you compiled defendants' Washington Exhibit A, now being examined by you?

A. Yes, sir.

Q. With what degree of care did you make that examination?

A. Well, sir, I was very careful to make a thorough examination, and I checked them off of township diagrams.

Q. From your examination so made, do you believe this list to show the fact in relation to the lands which are contained in the list, defendants' Washington Exhibit A.?

Mr. Kerr: Objected to as incompetent and irrelevant.

A. To the best of my knowledge and belief, I believe them to be the true status of the lands.

Q. Will you explain what the various headings and marginal notes are intended to mean, so that we may understand?
I think you have some headings there under "Parts of
288 Sections" "Remarks" and so no.

A. The status of the lands found in the column "Parts of Sections" will be found in the column of "Remarks."

Q. What is to be understood by "Status of the Lands' as you use it?

A. Their present condition, as shown by the tract-books.

Q. Their present condition, as the tract-books of the Land Department here show it to be? A. Yes.

Q. That is, at the date of the examination? It shows the condition at the date of the examination?

A. At the date of the examination, and only so far as the records here show.

Q. It does not purport to show any record that may be contained in any local land office? A. No, sir.

Mr. Moer: The defendants offer in evidence Defendants' Washington Exhibit A in connection with the examination of the witness. (See page 701 this record.)

Mr. Kerr: Objected to as incompetent, irrelevant and immaterial, as not the best evidence, and because no proper foundation has been laid for its introduction.

By Mr. Moer:

Q. There is one question which I should ask, that Mr. Hoyt has suggested to me. In determining whether or not the lands which you have noted in Defendants' Washington Exhibit A were within the indemnity limits, what method did you use? How did you determine that these lands were within the indemnity limits?

A. I took township diagrams and marked the limits on them from the official atlas in the Land Office, in Division F.

Q. And do we understand you to say that the lands
289 as found on Defendants' Washington Exhibit A come
within those limits as shown by the official atlas?

A. Yes, sir.

Mr. Moer: The defendants now again offer in evidence the paper above referred to.

Mr. Kerr: The objection is repeated.

By Mr. Moer:

Q. From what time did you make you examination; from what years down?

A. From January 1st, 1888, down to the date of the examination.

Q. To show what?

A. To show vacant lands and those lands that had been vacant at any time subsequent to that date.

Q. And their present condition?

A. And their present condition.

Q. The witness is shown Defendants' Washington Exhibit B, and asked to state what it is.

A. This is a list of lands that are in the second indemnity limits south of the Northern Pacific road from range 20 west, that is in the 4th and 5th meridians, up to the Red River of the North.

Q. In what way was that examination made?

A. In the same manner as the other exhibits.

Q. This, then, as I understand you, shows the condition of the lands mentioned in the exhibit?

A. Mentioned in the parts of sections.

Q. In defendants' Washington Exhibit B, as they existed at the time of your examination? A. Yes, sir.

Q. Traced from the 1st of January, 1888?

A. Yes, sir.

290 Q. But not prior to that time?

A. Not prior to that time, except in those lands that are taken now and have never been disposed of.

Q. I understand you to say, then, that as to all lands marked, that condition has always existed down to the present time, so far as the records show? A. Yes, sir.

Mr. Moer: The defendants offer in evidence Defendants' Washington Exhibit B. (See page 706 this record.)

Mr. Kerr: Objected to by the complainants as incompetent, irrelevant and immaterial, as not the best evidence, and because no proper foundation has been laid for its introduction.

By Mr. Moer:

Q. The witness is shown Defendants' Washington Exhibit C, and asked to state what it is?

A. This is a list of lands in the first indemnity north of the Northern Pacific road in Minnesota, in the 4th and 5th principal meridians.

Q. And was this exhibit made and compiled by you in the same manner as the other exhibits to which you have testified? A. Yes, sir; it extends to the Red River.

Q. It simply concerns lands in the north, in the first indemnity? A. North, in the first indemnity—north of the road.

Q. That shows the vacant lands as well? A. Yes, sir.

Q. If there are any? A. If there are any.

Q. Does this exhibit as well as the two preceding exhibits that have been introduced in evidence, show all the vacant lands within the respective indemnity limits examined by you?

291 A. Yes, sir; to the best of my knowledge and belief, it does.

Q. And the present condition of all such lands?

A. Yes, sir; as shown by the Washington records.

Mr. Moer: The defendants offer in evidence Defendants' Washington Exhibit C. (See page 709 this record.)

Mr. Kerr: Objected to by the complainants as incompetent, irrelevant and immaterial, as not the best evidence and because no proper foundation has been laid for its introduction.

By Mr. Moer:

Q. The witness is shown Defendants' Washington Exhibit D, and asked to state what it is?

A. It is a list of lands within the second indemnity north of the Northern Pacific road, from range 20, 4th principal meridian, to the Red River of the North.

Q. Showing a list of what, do I understand; the vacant lands? A. Yes, sir; vacant, etc.

Q. "And so forth". What is that?

A. Those that have been relinquished by the road and have been vacant since.

Q. By the Northern Pacific road?

A. By the Northern Pacific road, and have been vacant since.

Q. Those that have been taken since?

A. And those that have been entered since.

Q. Was that prepared in the same way as the other exhibits about which you have testified? A. It was, sir.

Mr. Moer: The defendants offer in evidence Defendants' Washington Exhibit D. (See page 713 this record.)

Mr. Kerr: Objected to by the complainants as incompetent, irrelevant and immaterial, as not the best evidence, and 292 because no proper foundation has been laid for its introduction. It is objected to further because the testimoney of the witness regarding the same consists of statements and conclusions of law.

By Mr. Moer:

Q. In referring to the indemnity lands in these various exhibits, and to which your examination was confined, what indemnity lands are those, and how do you determine it generally? Go over that again, please?

A. I determine it by making copies on township diagrams from the official atlas, which shows the limits of the railroad in the General Land Office.

Q. Is that atlas which you designate "official" the one used in the Land Department to determine the boundary lines of the indemnity limits?

A. It is the one they use in the office.

Q. What office? A. In the General Land Office.

Q. Where did you begin in your examination of these lands; what range? A. Range 20.

Q. West? A. 20 West; yes, sir.

Q. And to where did you go; how far west?

A. To, I think, Range 48 or 49, or to the Red River, whichever it is.

Q. It shows, however, on the exhibits which have been introduced? A. Yes, sir.

Q. The witness is shown Defendants' Washington Exhibit E and asked to state what it is?

293 A. It is a list of lands taken in lieu of certain lands in the Northern Pacific limits.

Q. Taken by whom in lieu? Do the records show?

A. I should say this is a copy of a list of certain lands.

Q. Made by whom? A. Made by me.

Q. And made from the records found in Washington?

A. Yes, sir.

Q. That is, the official records? A. Yes, sir.

Q. In the making of it, were you assisted by any one, or did you make it yourself? A. I made it myself.

Q. So the exhibit is the result of your own work?

A. Yes, sir.

Q. From comparisons made by yourself? A. Yes, sir.

Q. Memoranda taken at the time? A. Yes, sir.

Q. From what ranges does this exhibit cover?

A. You mean for the basis of the lieu lands.

Q. The lieu lands. Is it all in Minnesota?

A. It is all in Minnesota, within the indemnity limits, I suppose. I made this copy from their list.

Q. All you can state in that particular is that it is a copy of the official list made by you? A. Yes, sir.

Q. That is, taking it tract by tract, as it is found of record on the tract-books?

A. No, sir; I did not examine those tract-books.

294 Q. Then it is simply a copy of a list? A. Yes, sir.

Q. Will you explain, as shown by Exhibit E, how the lieu lands and the base lands are to be determined from the list: I do not understand it. On which side are the place limits?

A. The place limits are on the right hand, and the lieu is on the left; that is, where you say Section 5, such a township and such a range, in lieu of certain tracts lost in place.

Q. Then I understand you to say this list simply shows the place lands and the lieu lands that have been taken therefor, as shown by the list in the General Land Office in Washington? A. Yes, sir; for the lands lost in place.

Mr. Moer: The defendants offer in evidence Defendants' Washington Exhibit E. (See page 729, this record.)

Mr. Kerr: Objected to by the complainants as incompetent, irrelevant and immaterial, as not the best evidence and because no proper foundation has been laid for its introduction.

Mr. Moer: In connection with Defendants' Washington Exhibit E offered in evidence, the defendants offer in evidence Exhibit marked "Defendants' Washington Exhibit F," being a certified copy of a list of lands which accompanied the letter of the Commissioner of the General Land Office, under date of May 3, 1900, reporting to the Secretary of the Interior the results of the examination of the second indemnity grant by the joint resolution of May 31, 1870, to the Northern Pacific Railroad, now the Northern Pacific Railway Company, being statement B mentioned in the report of the Commissioner. (See page 743 this record.)

Mr. Kerr: Objected to by the complainants as incompetent, irrelevant and immaterial, as not the best evidence, and because no proper foundation has been laid for its introduction, and on the further ground that the document shows
295 on its face that it is incomplete.

Cross-Examination

By Mr. Kerr:

[—] Mr. Burke, did you not have some clerical assistance in this work?

A. Well, I had for twelve days; but I want to say here now that he merely checked off as I called from the tract-books, and after he had checked off, I would compare the tract-book with the check.

Q. Who was it that assisted you?

A. Mr. Gardner and Mr. Rainey.

Q. Did they both assist you at the same time?

A. No, sir.

Q. Who assisted you first? A. Mr. Gardner.

Q. When did he begin?

A. He began on February 19th and assisted me on the 20th, 21st, 23rd, 25th, 26th, 27th, 28th and March 1st, making nine days.

Q. When did the other gentlemen assist you?

A. March 14th, 15th and 16th.

Q. You worked alone the rest of the time?

A. Yes, sir.

Q. Would you call off the figures, or would they?

A. I would call off the tracts.

Q. And what did they do? A. They checked the plat.

Q. In Exhibit A, for instance, I see here the northwest quarter of the southeast quarter of 33, 45, 22, noted as vacant since February 20, 1873. A. Yes, sir.

296 Q. You would call off that description?

A. No, sir; I would not. I would call off the lands that were entered or selected, from the tract-book, and those that were left must be vacant; and before I made those notes I examined the plat with the tract-books. I ran over it again.

Q. You would call off the whole township again?

A. Well, I would call off the whole township again, yes. Every tract in that township that was taken or selected, I would call off.

Q. And they would note when each tract was entered?

A. No, sir.

Q. What would they do?

A. If I would see it was entered, taken, I would tell them to check it.

Q. You would not tell them when it was entered, however?

A. No, sir; the tract-book showed that, and they never looked at the tract-book at all.

Q. When you got through calling the whole township and told them what lands were entered, they would have for you a plat of the township, with the check mark on each tract that had been entered, would they?

A. No, sir; I would call off each section first, and examine each section separately.

Q. You would examine each section?

A. I would; yes, sir.

Q. Then you proceeded by sections, instead of by townships?

A. I went through a township by sections. I commenced section 1, 3, 5, 7, and so on, until I got through the township; but I would make an examination of each section before I would leave it, and make my notes.

297 Q. Then what was the object in having them checked for you?

A. Well, so as to know where I was, whether I was inside the limits, or outside the limits, and to find out whether it compared with the tract-books after I was through calling off.

Q. Would they determine whether you were in the limits, or would you determine that?

A. They would not determine that I was in the limits. I would do that before I would call off from the tract-book.

Q. I wish you would make it a little plainer as to the method you pursued. After you called off the various subdivisions of Section 1, what did they do?

A. After I had called?

Q. Yes. A. I would ask them what was left.

Q. In that section?

A. In that section. If they said none, I would tally it from the tract-books to see that it was correct. If they said a certain quarter or a certain half of a township was vacant, I would examine the books again to see whether it was correct or not.

Q. You gave them no dates of entry or attachment of rights, did you?

A. No, sir; they had no possession of the dates. I had the tract-book. They did not examine the tract-book at all.

Q. When did you make your memoranda with reference to the calling off of the descriptions?

A. At the time they were called off, or after they were called, after they were checked. After the plat was checked, I made my notes.

Q. Did you make your notes on section 1 before you proceeded to take up section 3? A. I did, sir.

298 Q. Would you make your notes on the plats which these men had checked?

A. No, sir; I had a pad. I made the notes, and then compared the notes with the tract-book and the check.

Q. What was the object, then, of calling off these sections at all?

A. Why, to see whether or not there was a forty missing, or any lots missing.

Q. Then do I understand you made a copy of all the entries which were contained in the tract-books?

A. No, sir; I did not.

Q. What entries on the tract-books did you omit?

A. I omitted those that were entered prior to January 1, 1888; that is, if the entry was not cancelled after January 1888.

Q. On Exhibit A you say the first description is "Vacant since February 20, 1873?" A. Yes, sir.

Q. You say you made no memorandum of any entry prior to 1888?

A. I said that I made no memorandum prior to 1888, except the lands that were vacant prior to that date, and subsequent to that date up to the time of making the examination?

Q. Your figures which are shown on Exhibit A purport to show the status of the tracts, and they are described from the date of their survey down to the date of your examination. Is that correct? A. The date of the survey?

Q. Yes.

A. I had nothing to do with the surveys. I did not find out when the lands were surveyed. If the lands were not surveyed, there would not be any entries on the lands.

299 Q. Referring to Exhibit A, when does your examination begin; with what date?

A. It is headed there January 24th, is it not?

Q. Yes. You do not understand my question. To what period of time does your examination have reference in Exhibit A?

A. From January 24th up to February 23rd, is it not?

Q. How far back did you go in your investigation?

A. How far back?

Q. Yes; in the tract-book record?

A. From the time the land was entered, I could tell exactly when the entries were made.

Q. In each case, then, in Exhibit A where a tract has been disposed of, your examination began with the entry which culminated in the patent. Is that correct?

A. I don't know whether the land was patented or not. I did not examine to see whether the land was patented.

Q. Suppose you found a tract of land covered by a homestead entry, dated 1880. Would you carry your investigation as to the status of that land back of that date?

A. No, sir, I would not, because it was entered in 1880. I would not carry it back. I would carry it forward. If that homestead was cancelled any time after it was made, and remained vacant, I would mark it "Vacant".

Q. So I understand you made no special examination of the status of these several tracts, at the respective dates of the definite location of the Northern Pacific line opposite thereto?

A. No, sir.

Q. Nor any special examination with reference to the status of these lands on July 2, 1864, the date of the Northern Pacific grant? A. No, sir.

300 Q. So that it may be, for all the information which you have at hand, and all shown on these Exhibits, that all of the lands described on Exhibit A may have been covered by homestead entries, pre-emption declaratory statements, or other entries, at some date previous to the date of entry shown on here?

A. They might. I went back only to January 1st, 1888.

Q. That is true as to Exhibits B, C and D, is it?

A. Yes, sir.

Q. Is all the information which is embodied in these exhibits, A, B, C and D, based on tract- books?

A. Yes sir! tract-books.—Well, I say based on tract-books. Now very often I had to refer to plats where the tracts were lotted and where rivers ran through that were traversed; and in order to cover the whole I went to the plats and marked the lots as they appeared upon the plats, so as to test the plat with the tract-book, to see whether it was all correct.

Q. But the only purpose for which you examined the plats, was to verify the descriptions?

A. Yes, the descriptions, especially lotting.

Q. Did you make any examination of the limits of withdrawal laid down on the various locations of other railroads?

A. Yes, sir; I have been employed by the St. Louis Iron Mountain Road.

Q. I mean in making this examination, and in preparing these schedules, Exhibits A, B, C and D, did you discover the status of those lands by reference to the withdrawal limits of any other railroad grants?

A. Well, no sir; I took the Northern Pacific grant.

Q. So that at the date of the definite location of the Northern Pacific grant, opposite the lands here described, 301 these lands might have been within the withdrawal limits for the benefit of other grants, might they not?

A. Yes, sir; they might.

Q. Did you examine the limits of Indian reservations with reference to these lands? A. I did, sir.

Q. With reference to these lands?

A. Yes, sir, I went to the plats. I met with several.

Q. Have you shown on these exhibits the fact, if it is a fact, that any of these lands are situated within Indian reservations?

A. If they were situated within any Indian reservation, I would not have noted them on the list.

Q. You would not? A. No, sir.

Q. Did you examine any Indian reservations except those which are now in force? A. No, I did not.

Q. So that if there had been any Indian reservations covering any of these lands at the date of the Northern Pacific grant and at the date of the definite location of its line, embracing any of these lands, and the boundaries of those reservations had afterwards been changed, it would not appear here that those lands were within such reservation? A. No, sir.

Q. I see by Exhibit D you have undertaken to show that the Northern Pacific Railroad Company selected certain lands there described and afterwards relinquished them. From what source do you obtain the evidence of its relinquishment?

A. From the tract-books, sir.

Q. In what way does it appear upon the tract-books?

302 A. In the first place, we will take Section 3, for instance, such a township and range. The tract-books will show that Section 3 was all selected as lieu land—all of

it, but in the column of "Remarks" it is noted there the tracts that have been approved and the tracts that have been relinquished.

Q. Have you shown on this Exhibit B the date of the selection of these tracts which you claim have been relinquished?

A. I think I have. It was some time in 1883, if I have not overlooked it. The date is given when it was selected and when it was relinquished. Most of them were relinquished in April, 1893.

Q. You mean 1883. You said 1873. A. I mean 1883.

Q. Did you examine the tract-books or the other records, to ascertain the status of these particular tracts which you show as relinquished at the date of their selection?

A. No, sir.

Q. You are unable to state the reason why these relinquishments were made?

A. No, sir; I know nothing about it at all.

Q. It may be, for all of your examination, that at the date of the selection these lands were covered by adverse claims, may it not?

A. If they were, the adverse claims would be of record yet, and I would check them off. I would not report them if they were.

Q. But you are not prepared to swear what particular lands here which have since been relinquished were covered by adverse claims, and what ones were free from adverse claims at the date of their selection? A. Yes, sir.

Q. You are prepared to swear?

303 A. Let me explain. In a great many instances, after the relinquishment by the railroad, these lands were entered, and I say that they are vacant from the time of the relinquishment up to the time that they were entered.

Q. But there may have been claims, declaratory statements or homestead entries, afterwards abandoned or cancelled, on these lands before their selection, may there not?

A. Yes, sir, there might be.

Q. Do you know, Mr. Burke, as to whether any of these lands described in Exhibit D were relinquished upon account of objections to the selections raised by the Interior Department? A. No, sir.

Q. You did not examine as to that? A. No, sir.

Q. Coming now to Exhibit E, will you explain a little more fully what this is intended to represent?

A. It is intended to represent a copy of certain lieu lists of the Northern Pacific, filed in the General Land Office.

Mr. Moer:

[—]Intended to represent a copy?

A. A copy of a list. I suppose the original lists are filed.

By Mr. Kerr:

Q. Do you mean to say there is any list on file in the office of the Commissioner of the General Land Office of which this is a copy?

A. Yes, sir. Yes; I didn't go to any other place than Division F to get that.

Q. Who filed the original of this list?

A. I don't know, sir. It is a Northern Pacific list. I know that.

Q. Is not this an extract from a large number of lists?

A. Yes, sir; I believe it is. In some lists they did not give
the specific tracts. You will find in some there is a
304 large number together. I took it from the list. I could
not separate each forty.

Q. Referring to Exhibit E, do I understand that the list of lands shown in the right hand column is a list of place lands or indemnity lands? A. Place lands.

Q. And the list of lands shown in the left hand column.

A. Are lieu lands.

Q. By whom was the list of lands in the right hand column furnished you? A. By Judge Hoyt.

Q. One of the attorneys for the defendants in this case?

A. I suppose so. I could not swear to it.

Mr. Moer: We will admit that.

By Mr. Kerr:

Q. What were your instructions with reference to the list which he furnished you?

A. To find out where the lieu was, and what tracts were taken in lieu.

Q. To ascertain that, what course did you pursue?

A. First, I went to the tract-book, and then afterwards I went to the lists to verify my notes from the tract-book.

Q. What lists did you go to then?

A. The lieu lists filed in Division F of the General Land Office.

Q. You mean the selection lists filed by the Railroad Company? A. By the Railroad Company; yes, sir.

Q. Have these lands in the left-hand column been certified or patented to the railroad company?

A. I don't know sir.

305 Q. Have they been in clear lists by the Department?

A. I don't know, sir.

Q. Did you make any examination to ascertain that fact?

A. No, sir.

Q. When were the lists filed in which you found these lieu lands described in the left hand column of Exhibit E?

A. I don't know, sir.

Q. As soon as you found any of these lands described in selection lists filed by the Railroad Company, did you cease your investigation as to those particular tracts?

A. Yes, sir.

Q. May it not be that other losses had been specified as a basis for many of these selections?

A. I don't know about that. I think I took the trouble to find out whether other lists had been filed.

Q. But you do not know whether any clear lists, embracing these lands and specifying the basis therefor, had been prepared by the Interior Department?

A. No, sir.

Q. Then this Exhibit E is a partial extract from several selection lists and entries shown on the tract-books. That is what it is, is it not? A. Yes, sir.

Re-Direct Examination

By Mr. Moer:

Q. The exhibits introduced in evidence upon the part of the defendants, A, B, C and D, relating to indemnity lands, as to some of which you have been cross-examined—do I understand that they show lands which had been at some time relinquished by the Northern Pacific Railroad Company?

306 Q. And lands which were at the time of your examination vacant, and had always been vacant, so far as the tract-books show? A. Yes, sir.

Q. If any entries had been made as to any of the lands which you have marked vacant, at any time in the history of the Land Department, would such entries have appeared upon the tract-books and been noted by you?

A. I don't know about that. Sometimes the tract-books are not correct.

Q. Assuming them to be correct, is it the custom of that office, if you know, to indicate on the tract-books all the entries ever made against any tract of land?

A. Yes, sir, it is the custom.

Q. And in keeping that tract-book, state if you know whether, except for mistakes, the entries would show?

A. They would show.

Q. So that as to those that are marked vacant, unless some mistake has occurred by some official in the Land Department who has neglected to make the [property] entry on the tract-book the land has ever been and was vacant at the time you examined it?

A. Yes, that I have marked vacant. I have marked there a grert many tracts that have been vacant from such a time to such a time.

Q. But on those marked vacant, no entry whatever appears upon the tract-book, of record? A. No, sir.

Q. The list, defendants' Washington Exhibit E, as I understand it then, is the result of your work in comparing portions of various lists found of record in the Land Department?

307 A. Yes, sir.

Q. And as a result thereof, you have summarized certain lands in place and the lands taken in lieu thereof?

A. Yes, sir.

Q. And that is the result of that? A. Yes, sir.

Q. Taken from the official lists; done by yourself?

A. Done by myself.

Recross-Examination

By Mr. Kerr:

Q. I understand, Mr. Burke, that so far as lands described in Exhibit D are concerned—

A. They are second indemnity, north of the road.

Q. So far as they are concerned, your examination began with 1888?

A. Yes, sir; that was the date I was told to fix—to go back that far.

By Mr. Moer:

Q. In Exhibit D, I find under the title "Remarks" the word "Vacant." A. Yes, sir.

Q. Wherever such word is entered without any further explanation, has that tract been opened to entry at all times, so far as the plat-books show? A. Yes, sir.

By Mr. Hoyt:

Q. Mr. Burke, there is one question I wish to ask you. In this list here you will find quite a number of remarks opposite to a piece of land "Claimed as swamp." A. Yes, sir.

Q. What do you mean by that?

A. I mean just what I say—just what the record

308 shows.

Q. Is there any evidence on the record that the land was taken or entered by any one?

A. No, sir, if there was, I would have noted it there. If there was selection of it, I would have noted it, and would not treat it as vacant land.

By Mr. Kerr:

Q. Claimed by whom as swamp?

A. That is more than I can tell, sir.

Q. That means it has been returned to swamp, does it not?

A. No, sir.

Q. Does it not mean that the surveyor's notes show it to be swamp? A. Well, no, sir; it does not.

Q. Where the surveyor's notes do show the lands to be swamp, what entry do they make on the tract-book?

A. They do not make any entry until the selection is made —not as a general thing.

Q. So the land may in fact be swamp land and a state entitled to it under its swamp land grant, and no evidence of that appear on the tract-book?

A. It may be swamp. I don't deny but what it might be swamp.

Q. Might it have been certified to the State as swamp, and still no entry? A. Not from the showing of the tract-book.

By Mr. Hoyt:

Q. In all those cases where your memorandum is opposite to a piece of land "claimed as swamp," there is nothing on the tract-book to indicate that it was selected by the State as swamp, is there?

A. No, sir, nor by any other party or parties. It is clear.

309 Q. What is the entry on the tract-book where a piece of land has been certified to a State as swamp?

A. Generally the date of the selection first, and then the approval noted afterwards, if it has been approved or certified to the State.

Q. Where you have shown on these various exhibits that a certain tract of land is claimed as swamp, what is the entry on the tract-book with reference to it?

A. Claimed as swamp, such and such a date, and very often no date whatever; but it is all in the same handwriting. I think it has been done all at the same time.

Q. Does it show by whom?

A. No, sir. I went so far as to try to find out, but I couldn't find out anything about it without a great deal of trouble.

By Mr. Moer:

Q. Mr. Kerr asked you the question whether or not you knew why the entries were made on the tract-books of "relinquished by the Northern Pacific Railway Company" in relation to these relinquishments, and asked you whether you knew an objection had been made on the part of the Land Department to the selections as made. If that was the reason, does any such thing appear on the tract-book in any way?

A. No, sir.

Q. What is the entry, as you have it in these various exhibits?

A. "Selected by the Northern Pacific Railroad," at a certain date; relinquished on a certain date.

Q. That is the only thing that appears?

A. That is all that appears of record.

Q. Is that in red ink or black ink? A. Black ink.

310

Defendants' Testimony.

Taken at Duluth, before Thomas H. Pressnell, General Examiner in Chancery, on April 3rd, 1901.

It is stipulated between the parties that the testimony to be adduced be taken down in stenographic character by a stenographer and afterward typewritten; and that the signatures of the witnesses is hereby waived.

It is also stipulated and understood That all objections taken to the testimony on behalf of any of the defendants on the ground of irrelevancy or immateriality may be made at the final hearing of the cause.

Frank M. Spears, being duly sworn as a witness on behalf of the defendants, testifies as follows:

Direct Examination

By Mr. Hoyt:

Q. Where do you reside? A. Duluth, Minnesota.

Q. What is your occupation?

A. I am a clerk for Mr. H. H. Hoyt.

Q. What doing? A. Abstracting.

Q. How long have you been engaged in that business?

A. About ten years.

Q. Are you familiar with the Government descriptions of lands and the locations in the Government Land Office?

A. I am.

Q. How long have you been familiar in that way?

A. I should say eight years.

Q. Have you examined the records from time to time in the Local United States Land Office at Duluth?

311 A. I have.

Q. Have you made an examination of the lands within the first and second indemnity limits of the Northern Pacific Railroad Company, in the office here of the United States, Range 20 west to the eastern boundary of the State?

A. To the eastern boundary up to Ranges 10 and 11 west.

Q. For what purpose did you make such examination?

A. To discover whether there was any vacant lands, for one, thing and to note the different entries.

Q. How long were you making such examination?

A. I have been on that for over a year.

Q. In making your examination what year did you commence to note the vacant Government lands within the first and second indemnity limits that you describe?

A. I think 1889.

Q. Wasn't it January 1st, 1888?

A. I couldn't tell the exact date.

Q. You don't understand my question. In looking for the vacant Government lands where did you commence; what date? A. January 1st, 1888.

Q. Did you prepare a list of the lands that you found vacant within those limits? A. I did.

Q. Have you that paper with you?

A. Yes, sir. (Witness produces the paper referred to.)

Q. This paper purports to show the lands vacant in the first and second indemnity limits north and south of the road?

A. North of the road.

312 Q. You didn't examine south of the road? A. No.

Mr. Hoyt:

Defendants offer Exhibit "F' in evidence. (See page 776 this record.)

Mr. Kerr: Objected to as incompetent, irrelevant and immaterial, not the best evidence, and no proper foundation laid for introduction of same.

Mr. Hoyt:

Q. In your examination in the United States Land Office did you examine for any lands taken by the Northern Pacific Railroad Company under the Act of July 1st, 1898? A. I did.

Q. Will you look at that paper, marked Exhibit "G", and state what that is?

A. That is a copy of the list filed in the Land Office here by the Northern Pacific Railroad Company of lands surrendered under the Act of July 1st, 1898, and lieu lands taken in place of them. The list is numbered "91".

Q. On file in the United States Land Office of this District?

A. Yes, sir.

Q. Do you know if that copy is a correct copy of it?

A. I do.

Q. I hand you "List 83", marked Defendants' Exhibit "H", and ask you whether that is of similar character?

A. Yes, sir.

Q. Is it correct do you know? A. Yes, sir.

Q. A correct copy of the one on file in the Land Office?

A. Yes, sir.

Defendants' Exhibits "G" and "H" are offered in evidence. (See pages 777 and 781 this record.)

313 Mr. Kerr: Objected to as incompetent, irrelevant, immaterial and not the best evidence.

Mr. Hoyt: I show you Exhibit "F",—will you state what that list purports to show?

Mr. Kerr: Objected to as incompetent, irrelevant and immaterial, as the exhibit is the best evidence.

A. It shows lands vacant on January 1st, 1888.

Mr. Hoyt: [—]Where?

A. In the first and second indemnity limits of the Northern Pacific Railroad Company running from Range 11 to 20 west.

Q. To the best of your knowledge or belief it is correct?

A. Yes, sir.

Q. Where did you get that information?

A. From the tract-book in the United States Land Office here in Duluth.

Q. From that you got this information? A. Yes, sir.

Q. The tract books, then, in the local Land Office show that those are vacant lands?

A. Well, not all necessarily vacant at the present time.

Q. Were they vacant on January 1st, 1888, on the tract books? A. Yes, sir.

Q. I show you this map, marked "Exhibit I", and wish you would explain what that map is?

A. That is a map of lands selected, lost and relinquished by the Northern Pacific Railroad Company.

Mr. Kerr: I move to strike out the answer as not best 314 evidence.

A. It is a map showing location in State of Minnesota.

Mr. Hoyt:

Q. Go on and explain what is indicated by these different colors?

Mr. Kerr: This is objected to on the ground that no foundation is laid for it.

A. The red is land lost by the Northern Pacific Railroad Company.

Mr. Hoyt:

Q. Where did you get that information?

A. From certified copy from the General Land Office in Washington.

Q. Is that the paper you derived that information from?

A. It is.

Q. These red lands are correctly put down? A. Yes, sir.

Q. As far as you know? A. Yes, sir.

Q. You refer to red lines on plat marked Exhibit "I" for identification? A. Yes, sir.

Q. What do the yellow lines indicate?

A. Lines relinquished by the Northern Pacific Railroad Company.

Mr. Kerr: I move to strike out answer, as no proper foundation has been laid for explanation.

Mr. Hoyt:

Q. What are the green lines?

A. Lands selected by the Northern Pacific Railroad Company in lieu of the lands claimed to have been lost by the Mississippi Road.

Mr. Kerr: Same motion.

My Hoyt:

Q. What are the black lines designated on the map?

A. Lands not taken,—vacant.

Mr. Kerr: Same motion.

315 Mr. Hoyt: Exhibit "J" is offered in evidence by defendants. (See page 785, this record.)

Mr. Kerr: Objected to as incompetent, irrelevant and immaterial.

Cross-Examination

By Mr. Kerr:

Q. Referring to Exhibit "F," Mr. Spears, I understand you to say that it purports to be a statement of the lands in the first and second indemnity limits of the Northern Pacific road, in State of Minnesota, between ranges 20 and 11, west, which were vacant on January 1st, 1898? A. Yes, sir.

Q. Did you carry your examination with reference to those lands down to a period subsequent to that date, or did you merely determine the status of the land on that particular date? A. I carried it down to a later date.

Q. All the lands? A. Yes, sir; the lands on that exhibit.

Q. Down to what date did you carry your examination?

A. Down to April 1st, 1901.

Q. You didn't carry your examination back of January 1st, 1888?

A. From the Government down from the very start.

Q. But the exhibit only purports to show the status of the lands on January 1st, 1898, and since that time?

A. Well, the status of the land from the Government down —from the beginning.

Q. So that if any particular tract of land was at any time covered by an adverse claim, or was land that wasn't subject to selection at any time, that fact appears on the exhibit?

A. As to those lands, yes, sir.

Q. Did you carry the examination with reference to these lands beyond the tract-books in the Local Office?

316 A. No, sir.

Q. Suppose a pre-emption declaratory statement had been filed for one or more of these specified tracts and had afterward expired before January 1st, 1888, would you show that on your examination?

A. If it was shown on the tract-books.

Q. It might be, however, that such an expired declaratory statement would not be shown on the tract-books?

A. Yes, it might not.

Q. The custom in the Local Office at Duluth is to note declaratory statements, in accordance with instructions, with pencil on the tract-books? A. No, sir.

Q. What is the usual custom? A. It was earlier.

Q. What was later? A. In ink.

Q. When did they begin to enter declaratory statements in ink? A. I cannot answer that question.

Q. If a declaratory statement had been placed on one of these tracts of lands and had expired before January 1st, 1888, would you show that on the statement as vacant or subsequent claim?

A. Well, not knowing when the declaratory statement really expired, I would show it as holding good; it would not appear on this list.

Q. Don't you know when declaratory statements expire?

A. Well, one expires in six months.

Q. What one?

317 A. Soldiers'; they have a right to file in six months.

Q. What is the time preemption declaratory statements expire? A. That I don't know.

Q. Is there any difference between the dates of expiration of pre-emption declaratory statements on offered and unoffered lands? A. I am not posted on that.

Q. Did you take up these various tracts shown on Exhibit "F" with reference to other railroad grants other than the Northern Pacific? A. Yes, sir.

Q. What means did you employ? A. The tract-books.

Q. It is not a fact, is it, that the limits of all railroad grants are shown on tract-books? A. No, they are not.

Q. Your examination of the tract-books would not determine whether these lands were implied in railroad grant?

A. No, sir.

Q. You are able to state these lands on Exhibit "F" might have on January 1st, 1888, before or since, been included in withdrawal for the benefit of other grants?

A. Yes, they could.

Q. They might also have been included in reservations ordered in the Interior Department for other purposes?

A. That I don't know; those taken for schools, Indian Reservations, swamps, the tract book shows; some for Indian Schools; that is all the reservations noted on the tract-books.

Q. If the tracts were in fact swamps and so declared
318 at the time of survey, but had never been selected by
the state, would that appear as swamp on the tract-
book? A. I couldn't say.

Q. All these lands then might possibly be swamp lands, might they not?

A. They might be, but I don't think they are.

Redirect-Examination

By Mr. Hoyt:

Q. I understand that all you claim for this list is what the tract-book shows? A. Yes, sir; exactly.

Q. When you made the examination you had a diagram of the first and second indemnity limits taken from the map?

A. A map furnished us from Washington; a certified copy.

Q. Referring to Exhibits "G" and "H" I forgot to ask in your examination if such lists of land filed by the Northern Pacific Railroad Company under the Act of July 1st, 1898, were all the lists you found? A. No, sir, it is not.

Q. How many other lists on file? A. 38.

Q. Similar to those? A. Yes sir.

Q. Did you give the amount of land in the several lists, and if so, give the aggregate amount,—about 40 lists in all, I understand?

Mr. Kerr: Objected to as incompetent, irrelevant and immaterial.

Mr. Hoyt:

Defendants offer in evidence "Defendants' Exhibit K", being the Circular from the General Land Office containing regu-
lations, under the Act of July 1, 1898, to facilitate the
319 adjustment by the Land Department of conflicting
claims to lands within the limits of the Grant to the
Northern Pacific Railroad Company. (See page 893 this record.)

Mr. Kerr: Objected to as incompetent, irrelevant and immaterial.

Mr. Hoyt: Defendants offer in evidence Exhibit "L", being an exemplified copy of the acceptance by the Northern Pacific

Railroad Company of the provisions of Act of July 1st, 1898, concerning its land grant. (See page 913 this record.)

Mr. Kerr: Objected to as incompetent, irrelevant and immaterial.

Mr. Hoyt: Defendants offer in evidence, as Exhibit "M", exemplified copy of Letter "F" of October 5th, 1896, and letter of February 23, and November 5th, 1897, addressed to the Honorable Secretary of the Interior relative to the deficiency within the grant to the Northern Pacific Railroad Company by acts of Congress of July 2, 1864, and May 31, 1870. (See page 915 this record.)

Mr. Kerr: That portion of Exhibit "M" being the letter of the Commissioner of the General Land Office, dated October 5th, 1896, objected to as incompetent, irrelevant and immaterial. (Objection later withdrawn.)

Mr. Hoyt: In connection with offer of Exhibit "M" defendants desire to offer the decision of the Secretary of the Interior found in Volume 25 of the Land Office Decisions on page 5111, case of the Northern Pacific Railroad Company, and in this connection, it is stipulated that the decision above referred to and all other decisions, regulations and instructions by the Secretary of the Interior, or the Commissioner of the
320 General Land Office in published volumes known as Land Decisions may be read upon the hearing with the same force and effect as if offered in evidence in the return of the record.

Mr. Hoyt: Defendants offer in evidence, as Exhibit "N", a paper being the exemplified copy of the circular letter dated August 4, 1885, and addressed to the Register and Receiver by the Commissioner of the General Land Office, approved by the Secretary of the Interior, in reference to the mode of selecting indemnity lands in lieu of lands lost in place limits of the grant; also, an exemplified copy of the letter dated May 26th, 1864, to the Register and Receiver at Duluth, as to withdrawal of lands enclosed in the diagram marked "A" Lake Superior and Mississippi Railroad"; also, exemplified copy of the letter dated November 2, 1866, addressed to the Register and Receiver, Duluth, Minnesota, in reference to lands of the Lake Superior and Mississippi Railroad"; also, a letter dated November 24, 1899, from the Commissioner of the General Land Office to the Secretary of the Interior in reference to the adjustment of the grant of the Northern Pacific Railroad Company. (See page 921 this record.)

Mr. Kerr: Circular of August 4, 1885, is objected to as incompetent, irrelevant and immaterial, and for the further reason that it contains only a portion of the instructions with reference to indemnity selections in force at the several dates when the lands in controversy were selected.

Letter of May 26th, 1864, is objected to as incompetent, irrelevant and immaterial, and for the further reason that it
321 does not appear that the same ever became operative, and, that the lands therein described are not identified.

The letter of November 24, 1899, is objected to as incompetent, irrelevant and immaterial.

Mr. Hoyt: Defendants offer in evidence, as Exhibit "O" a copy of so much as is shown thereon of the diagram prepared by the Commissioner of the General Land Office showing line of the road and the limits of the grant by the Act of May 5th, 1864, of the Lake Superior and Mississippi Railroad Company, in connection with the letters found in Exhibit "N". (See page 930, this record.)

Mr. Hoyt: Defendants offer in evidence copies of lists of second indemnity lands relinquished by the Northern Pacific Railroad Company as described in Exhibits "P", "Q", "R", "S", "T", "U", "V", "W", "X", "Y", "Z", "A-A", each of said exhibits being an exemplified copy of the relinquishment on behalf of the Northern Pacific Railroad Company of the lands therein described. (See pages 932, 936, 941, 945, 949, 955, 959, 963, 967, 973, 977, and 981, this record.)

Mer Kerr: Objected to as incompetent, irrelevant and immaterial, and for the further reason, that it appears on the face of each of said relinquishments that they were severally filed before the rights of any of the defendants herein were initiated; no objection, however, being made to the offer in bulk.

Mr. Hoyt: Defendants offer in evidence relinquished lists of lands by the Northern Pacific Railroad Company, filed with the Commissioner of the General Land Office in the local offices, in the first indemnity limits, which contains the list
322 of lands relinquished by said Company described in Exhibits "B-B", "C-C", "D-D", "E-E", "F-F", in the first indemnity limits. (See pages 989, 994, 998, 1002, and 1006, this record.)

Mr. Kerr: Each of said exhibits severally objected to as incompetent, irrelevant and immaterial, and upon the further ground, that it appears upon the face of each thereof that the same was filed before the rights of any of the defendants herein were initiated; no objection, however, is made to the offer in bulk.

By consent of the parties the following additional testimony was offered on behalf of the complainants:

Mr. Billson: Complainants offer in evidence as Exhibit "66," a certified copy, under the hand and seal of the Commissioner of the General Land Office, of the statement "F" which accompanied the Commissioner's report of May 3rd, 1900, relative to the second indemnity lands of the Northern Pacific Railroad Company in Minnesota. (See page 661 this record.)

Mr. Harris: Objected to on the ground that it is incompetent, irrelevant and immaterial, not the best evidence, and no proper foundation laid for the same; it appears to be part of report the balance of which is not in. Overruled. Defendant excepts. 323

Mr. Billson: Complainants also offer in evidence as Exhibit "67," a copy, exemplified under the hand and seal of the Secretary of the Interior, of a letter dated January 16th, 1901, from the Secretary of the Interior to the Commissioner of the General Land Office remanding to the Commissioner the question of second indemnity lands of the Northern Pacific Railroad Company, in Minnesota. (See page 663, this record.)

Mr. Hoyt: Objected to as incompetent.

Earl F. Marvin, being sworn as a witness on behalf of the complainants, testifies as follows:

Direct Examination

By Mr. Billson:

Q. Are you the same gentleman who has testified in this case a couple of times before Mr. E. L. White, in the City of Washington? A. I am.

Q. Have you now in your possession the detailed memorandum of lands in the first indemnity limits of the Northern Pacific Railroad Company in Minnesota which had become unavailable to the Company under its grant and to which you referred in your testimony before Mr. White on the 26th of last month? A. I have.

Q. This is the detailed statement which you say you checked up and corrected by reference to the tract-books in the General Land Office during the examination which you recently made of those books? A. It is.

324 Q. You know it to be correct in all its details as shown by those tract-books? A. Yes, sir.

Mr. Billson: The detailed statement referred to by witness is marked Exhibit "68" and is offered in evidence.

Mr. Harris: Objected to on the ground that it is incompetent, irrelevant and immaterial, not best evidence, and no proper foundation laid for the introduction of same. The objection is not intended to cover the point that the exhibits are not true copies of the entries shown on record.

Objection acquiesced in by complainants and the offer of the Exhibit withdrawn.

And here the hearing is adjourned until Saturday, April 20th, 1901.

325 By consent of counsel the hearing set for April 20th, was continued until April 25th, 1901, at nine o'clock.

On this 25th day of April, 1901, the parties to this cause appear before Thomas H. Pressnell, General Examiner in Chancery, for the purpose of taking further testimony on behalf of both complainants and defendants, there appearing at this time,

J. B. Kerr, Esquire, and W. W. Billson, Esquire, of the firm of Billson, Congdon & Dickinson, on behalf of the complainants, and,

H. H. Hoyt, Esquire, and A. Jaques, Esquire, of the firm of Jaques & Hudson, on behalf of the defendants for whom they heretofore appeared and answered.

Mr. Jaques: We offer in evidence a patent of the United States to Robert Angst for the S. E. 1-4 of the N. W. 1-4 and the N. E. 1-4 of the S. W. 1-4, Section 1, Township 54, Range 13 west, dated January 26th, 1898, and which patent is marked "Defendants' Exhibit G-G." (See page 1013 this record.)

Mr. Jaques: We also offer a warranty deed conveying the same land, executed by Robert Angst and wife to the Franklin Lumber Company, dated May 26th, 1898, and acknowledged on the same date, which deed is marked "Defendants' Exhibit H-H." (See page 1015, this record.)

Mr. Jaques: We also offer in evidence a contract bearing date July 14th, 1898, by and between the Franklin Lumber Company and E. S. Howe, by terms of which contract the Franklin Lumber Company agrees to sell to the said E. S. Howe all pine timber suitable for saw-logs on the land heretofore described, and other land, which document is marked "Defendants' Exhibit I-I." (See page 1017, this record.)

S. C. Brown, being now sworn as a witness on part of the Franklin Lumber Company, testifies as follows:

Direct Examination

By Mr. Jaques:

Q. Mr. Brown, do you live in Duluth? A. Yes, sir.

Q. How long have you lived here?

A. About seventeen years.

326 Q. What is your business?

A. Dealing in pine lands.

Q. Have you had experience in estimating pine?

A. Yes, sir.

Q. For how long? A. Oh, for nearly twenty years.

Q. You have worked at that in the lumber woods of this county? A. Yes, sir.

Q. Are you familiar with the premises described in this Complaint and known as the S. E. ¼ of the N. W. ¼ and the N. E. ¼ of the S. W. ¼ of Section 1, Township 54, Range 13?

A. Yes, sir; I examined those lands once.

Q. What time was that? A. In May, 1898.

Q. That was before the timber was cut? A. Yes, sir.

Q. You made an estimate of the amount of timber upon the two 40's? A. Yes, sir.

Q. Can you state what amount of timber you discovered upon these two 40's?

A. Yes, sir; my estimate was 495,000.

Q. Did you make any memorandum of that at the time?

A. Yes, sir.

Q. Have you it here? A. Yes, sir.

(Witness produces memorandum referred to and same is marked Exhibit "J-J.")

Q. Is Exhibit "J-J" the memorandum that you made at that time? A. Yes, sir.

Mr. Jaques: Defendant's Exhibit "J-J" is offered in evidence. (See page 1020, this record.)

Q. Mr. Brown, how much experience have you had in estimating timber?

A. Oh, a great deal, since I was nineteen or twenty years of age.

327 Q. You think, then, that this amount of 495,000 is accurate?

A. That was my best judgment of it when I was on the land.

Q. You say that you have been dealing in timber in St. Louis County? A. Yes, sir.

Q. Are, or were you, familiar with the value of pine timber stumpage in the vicinity of this land in Section 1 during the lumbering season of 1899?

A. Yes, sir, I had a general idea of the values of timber all through that locality; I couldn't mention any particular piece.

Q. Were you generally familiar with the market value amount for which sales were made? A. Yes, sir.

Q. You may state what would be, or was, the fair market value of the timber upon these two 40's in Section 1, or in that vicinity, generally, during the lumbering season of 1898-1899? A. From $1.50 to $2.00.

Q. Were you familiar with the value of timber in that same vicinity during the lumbering season of 1899-1900?

A. Well, in a general way; I was not as well posted on the timber during that year as I was in 1898-1899, but I had a fair general idea of it.

Q. Can you state what in your judgment was the fair market price during the season of 1899-1900?

A. I think it had gone up some; it was worth from $2 to $2.50.

Q. Can you state what would be the proper allowance on this particular land that you are familiar with for defective timber in making an estimate,—what in your judgment it would be?

A. Well, do you mean from the full amount that it would scale if perfectly straight and sound?

Q. Yes.

A. Well, I should think about 20 to 25 per cent.

328 Q. In case of a scale being made on a trespass, from stumps and tops, it is impossible to make the actual allowance is it not? A Yes, sir, it is impossible.

Q. In case of the scale made in that way the proper allowance would be from 20 to 25 per cent?

A. Yes, sir, I think that would be right.

Q. In the season of 1898-1899 were you familiar with the value of logs banked or afloat in the St. Louis River, the Cloquet River, right in the vicinity where they bank logs?

A. Yes, sir, I had a general knowledge of the value of logs on the Cloquet River at that time.

Q. Will you state the fair market value of logs banked on the river at the nearest point to this land, during the winter of 1898-1899?

A. It would depend somewhat on the quality of the logs.

Q. Such logs as there were on these premises?

A. I doubt if those logs brought over $5.50 or $5.75 if on the bank or in the river at that time.

Q. Are you familiar with the reasonable worth of driving logs to the mills at Cloquet?

A. No, sir, only in a general way; I can give you what my ideas are: I should judge about one-half a dollar.

Cross-Examination

By Mr. Billson:

Q. How long a haul was there on this timber?

A. I think it was from a mile to a mile and a half, if I remember right.

Q. Under what circumstances did you make this estimate in 1898? A. I think it was at the request of Mr. Webber.

Q. How much time did you occupy in making the estimate?

329 A. I don't remember; whatever time I considered necessary; I don't remember how long it was.

Q. You have no idea? A. No, sir.

Q. It is a fact, is it not, that preliminary estimates of that character habitually underrun the actual cut?

A. I don't think [say] I can say it is, with my experience. In some cases it goes one way, and in some, the other. I think I am very much under, usually; I have been too high in some cases.

Q. Was that estimate for Mr. Webber made in view of a prospective purchase on his part?

A. I think so, but I don't think he told me what his intentions were.

Q. That was your understanding?

A. I am inclined to think he was going to buy, but I couldn't say he told me so.

Q. I wish you would try and give me some idea of the length of time which you spent in estimating the quantity of pine on these two 40's? From regulation or general custom in estimating?

A. It is pretty hard to tell how much time one would spend on one forty; it takes longer on some parts than others. You must considere the character of the country to which you go, brush, etc. I cannot remember how long, but I should say less than half a day on the two forty's.

Q. What proportion of the trees on a forty would you actually count?

A. Everything that would make an 8-inch log was what we figured.

Q. You mean you actually see and count each tree on a 40?

A. Not ordinarily, no, sir; there are cases in which we do.

Q. How did you proceed where you did not actually count the trees?

330 A. We figured the land would cut so much to the acre. We sometimes run out an acre when the land is heavily timbered, measure it up, count it up and then figuring how many acres on the tract we get at the estimate in that way, allowing a fair proportion for culls, etc.

Thomas Baker, being sworn as a witness on the part of the Franklin Lumber Company, defendant, testifies as follows:

Direct Examination

By Mr. Jaques:

Q. Mr. Baker, you live in Duluth? A. I do.

Q. How long have you lived here?

A. About sixteen years.

Q. In what business are you engaged?

A. Well, in exploring and scaling.

Q. How long have you been engaged as an explorer and scaler? A. About twelve years.

Q. In the lumber woods of this vicinity? A. Yes, sir.

Q. Have you ever held any position as scaler?

A. I have as Deputy Surveyor-General.

Q. Are you Deputy Surveyor-General now?

A. No, not now; I was up to the 16th of April.

Q. Were you also Deputy Surveyor-General under the previous administration? A. I was.

Q. Are you familiar with the premises known as the N. W. 1-4 of the S. E. 1-4 and the S. E. 1-4 of the N. W. 1-4, Section 1, Township 54, Range 13, St. Louis County? A. I am.

Q. When did you first see those two 40's?

A. I went up there on the 15th of April.

Q. Hadn't you been on these premises before that?

A. Not on those lands.

331 Q. Well, you scaled some of these logs?

A. I was there the winter that Morris Thomas logged for Mr. Howe, and I checked up those logs.

Q. For the Surveyor General of logs? A. Yes, sir.

Q. That was banked scale? A. Yes, sir.

Q. Of course that was on logs from these 40's and other forty's? A. Yes, sir.

Q. So, from that scale you could not tell the amount of lumber from this 40? A. No, sir.

Q. You have been on these 40's recently?

A. Yes, sir, on the 15th of this month I went there.

Q. What did you do there?

A. I went to the S. W. corner between 1 and 2 and 12 and 11 and then ran north and chained.

Q. You chained the distances?

A. Yes, sir; went clear to the north side of the section, to the town line.

Q. Did you find the section corners?

A. I found two section corners, but I didn't find the quarter stake.

Q. You located all the lines of these two 40's?

A. Yes, sir; then I chained from the eighth-stake east 80 rods and struck the chopping. Then I also chained east from what I supposed was the quarter-stake, but the Government survey mark was not on the tree; there I also struck the chopping. I did the same thing on the sixteenth-stake on the north side; then I started from the Southwest corner chain to the quarter-stake between 12 and 1 and then chained north 80 rods and found the stake that had been established there, and then I ran through north on the old line.

332 Q. So that you were satisfied that you had the correct lines and made no mistakes about these lines?

A. Yes, sir.

Q. What did you proceed to do then?

A. Then I commenced to measure trespass at the southwest corner of the N. E. 1-4 of the S. W. 1-4 forty.

Q. How long were you engaged in doing this?

A. I was nine days.

Q. Did you have any assistance?

A. I had two men with me.

Q. How was it as to snow at the time you made the estimate?

A. In the chopping there wasn't any snow to bother, at all.

Q. So it was comparatively easy to discover stumps?

A. It was, yes, sir.

Q. What was the timber that had been cut there?

A. There was some white pine, tamarack, and I think a few spruce; quite a good many tamarack.

Q. You may state how much timber you discovered the trespass to amount to on these two 40's?

A. On the N. E. 1-4 of the S. W. 1-4 I found 1735 trees or 344,631 feet, and on the S. E. 1-4 of the N. W. 1-4 I found 2212 trees, 436,131 feet.

Q. The number of trees there included what?

A. Everything; the trees as I found them; tamarack as well as pine; I measured everything.

Q. Was there much spruce?, A. I think not.

Q. You may state how many thousand feet of tamarack you estimated on the two 40's?

A. I didn't keep that separately, but I should say probably 40,000 feet; I have no actual knowledge as to the exact amount.

333 Q. You say you did not keep it separate?

A. No, I had no instructions to that effect. I did the same as I did to every trespass,—measured everything I found on the land.

Q. What rule did you follow in scaling this trespass?

A. Measured the butt,—took the diameter of the butt, then measured the length of the tree, and then the top, and allowed one-third of the amount between the size of the top and the butt and added it to the butt; supposing the butt was 20 inches and the top was 8 inches there would be a difference of 12 inches; I would measure the tree at 12 inches. That is Scribner's Rule.

Q. You superintended all of the work? A. I did, yes, sir.

Q. I suppose you didn't do all the measuring?

A. No, I couldn't do all that; I kept my own book and measured the greater part of the stumps and tops myself.

Q. This book I hand you, that is the record made at the time the scaling was done? A. Yes, sir.

Q. It contains the full amount on each 40 and shows the size of the stump, length of the tree and the size of the top?

A. Yes, sir.

Q. You may look at paper marked Exhibit "K-K" and state what it is.

A. That is a duplicate of my book, the totals.

Q. The certificate of the Surveyor General as to your scaling of the trespass.

Q. You are familiar with the signature of the Surveyor General? A. Yes, sir.

Mr. Jaques: Exhibit "K-K" is offered in evidence. (See page 1021, this record.)

Q. As I understand it, in making this scale you had two assistants? A. Yes, sir.

Q. And it took you nine days? A. Yes, sir.

334 Q. Now what would be the proper allowance in scaling trespass of that character, for defective timber, or cull?

A. I should think on that timber there, about 20 per cent.

Q. You base your judgment as to proper allowance for defective timber on personal knowledge of the timber scaling on the bank?

A. Yes, sir, and from the surrounding timber, standing.

Q. Then, in your opinion there ought to be from your total amount deducted, to get down to the lumber scale, the amount of tamarack you estimated, which was 40,000 feet?

A. That is as near as I should think. I didn't keep any track of it; it went right in with the pine.

Q. Do you know anything about the values, in 1898-1899 and 1899-1900, in the vicinity of this land?

A. Oh, I don't know particularly, of course, but from my running around from place to place and talking with lumbermen, I have an idea as to what it was worth.

Q. You had knowledge of what timber was being bought and sold for by different people? A. Yes, sir.

Q. What is your recollection of the market value of timber in this vicinity, during the lumbering season of 1898-1899?

A. $1.75 to $2.

Q. What is your recollection as to the market value during the lumbering season of 1899-1900?

A. I think the price had advanced some,—probably to $2.50 or something like that.

Q. Did you have any knowledge of the value of logs in the river where you did your scaling? A. No, I don't think so.

Q. Did you do any scaling on the bank during the winter of 1899?

A. I was there three different times during the winter of 1898-99.

335 Q. That was at the time that Morris Thomas was logging?

A. Yes, sir, and I was also there a couple of times the winter John Smith logged there.

Q. Are you acquainted with Daniel Cameron?

A. I ain't personally acquainted with him.

Cross-Examination

By Mr. Billson:

Q. Do you know of any timber of this character and as well located that sold for the price that you gave in the season of 1898-1899? Can you mention any?

A. I think Mr. Howe told me what he paid for this.

Q. When did he buy it?

A. I couldn't say; that summer of 1898.

Q. He told you he paid what? A. I think $2.

Q. You knew the title to this property was in dispute?

A. I didn't know anything about it; I had no idea.

Q. About how long a haul is this to the river?

A. I think about a mile to a mile and a half.

Q. Was the price of stumpage advancing steadily from the summer of 1898 up to the spring of 1900? A. I think not.

Q. When did it commence to advance?

A. I think the spring of 1899.

Frank R. Webber, being duly sworn as a witness on behalf of the Defendant, Franklin Lumber Company, testifies as follows:

Direct Examination

By Mr. Jaques:

Q. You are an officer of the Franklin Lumber Company?
A. I am.

336 Q. What has been your occupation in Duluth?
A. Dealing in timber lands, and lumber business.

Q. You are manufacturing lumber or buying and selling timber lands? A. Both.

Q. How long have you been in the lumber business at the head of the lakes? A. About eighteen years.

Q. Are you familiar with this lumber region in the vicinity of Section 1, Township 54, Range 13? A. I am.

Q. Sold any stumpage or lands in that vicinity?

A. Both, yes sir.

Q. When did you first commence dealing in lumber in that vicinity? A. More or less for eighteen years.

Q. In that particular vicinity?

A. Eighteen years, I should think.

Q. Could you state how much stumpage you bought and sold in that vicinity? at any time?

A. Oh, a large amount; I could say how much I bought and sold commencing about the spring of 1898.

Q. You may state the amount?

A. From the spring of 1898 until the spring of 1900 I bought and sold more than 40,000,000 feet of similarly situated timber.

Q. You are familiar, then, with the market price of timber in that locality in the spring of 1898 and through the summer of 1900? A. Yes, sir.

Q. You may state what was the reasonable market value for timber in the vicinity of these two 40's, the best timber on them, in the lumbering season of 1898-1899?

A. You mean the cash value?

Q. The sale value,—market value?

337 A. You don't mean a sale made on time?

Q. The regular market cash value.

A. During the season of 1898-1899, $1.50 to $1.75 per thousand.

Q. What would you place the value at during the season of 1899-1900?

A. Well, timber had advanced some, perhaps seventy-five cents higher; it had advanced fifty to seventy-five cents a thousand.

Q. That would make the market price during season of 1899-1900? A. $2.25; about $2.25 to $2.50.

Q. Are you familiar with the value of logs at the river, at the point where lumber is taken from these two 40's, during the winter of 1898-1899? A. Yes, sir.

Q. What would that value be?

A. From $5.00 to $5.50 per thousand.

Q. This timber at the Cloquet River was all adjacent to Cloquet? A. Yes, sir.

Q. Were you familiar with the market value of logs at the mill in Cloquet during that winter of 1898-1899?

A. The mills figure a difference of fifty cents per thousand for driving.

Q. Can you state what would be the reasonable cost for logging and banking timber in the Cloquet River at this point, during the winter of 1899?

A. $3.50 per thousand; I think Mr. Howe undertook it at $3 and lost money.

Q. I understood Mr. Hornby to state in his testimony that it was customary to figure the value of stumpage, to estimate the cost of logging and deducting from the price of the mill; is that customary among lumbermen? A. Yes, sir.

338 Q. Looking at the value of these logs in that way what would that make the value of logs at this point?

A. They paid $5.50 for these logs delivered and banked to float in the river there; that would leave the stumpage $2.00, but it would not be very profitable to anyone doing it, and this price of $5.50 was fifty cents more than it could be got from anyone else at the time.

Q. That was rather above than below the market value in the river? A. Yes, sir.

Q. According to that method of figuring, then, $2.00 per thousand would be too much for logs on that basis?

A. It would be on a cash trade. I sold this stumpage for $2.00 by waiting for my pay and taking the chance of falling short of the estimate and taking my chance of the lands being cleared that season.

Q. Your contract with Howe was made at what date?

A. The 14th of July, 1898.

Q. That was made for the logging season of 1898-1899?

A. Yes, sir.

Q. By the terms of that contract the stumpage was not to be paid until next spring?

A. I assisted in the sale of the logs and carried the stumpage in order to get this price for it, which was at least twenty-five cents above the market value.

Q. That is at the time this contract was made, July, 1898. You may state whether there was any timber sold in that vicinity for $2.00.

A. I don't know of any at that time nor at any other.

Q. I suppose that in the winter of 1899-1900, those logs in the river were more valuable than in 1898-1899?

339 A. Yes, sir, they were fifty cents per thousand higher, as there was a better market and more demand for them.

Q. Could you state at what time the market price for timber up there commenced to improve?

A. The market price for lumber commenced to improve specially in the spring of 1900, as I remember.

Q. Did the price for stumpage rise before or after that?

A. The stumpage had crept up a little in the season, oh, from 1899 to the winter of 1900, some fifty cents.

Q. In this locality where these logs were was there any particular reason why stumpage commenced to rise in 1899? Had there been any limit on the buyers previously?

A. Yes; I think O'Brien's commencing to buy late that season was one thing that started the advance in price there; affected it some.

Q. Are you acquainted with Mr. Hornby who testified in this case? A. Yes.

Q. Do you know what company he represents?

A. The Cloquet Lumber Company.

Q. Can you state of your own knowledge whether that is one of the Weyerhaeuser concerns? A. It is.

Q. Can you state in scaling trespass what is the general rule about allowance for defective timber, whatever you call it, how do you arrive at deductions for defective timber?

A. The general rule is that there is a discount made as on logs themselves being scaled, and that is from 20 to 25 per cent for culls and supposed to be a straight and sound scale, or Scribner's Rule.

Q. Could you state how much you paid for stumpage on an average in the summer of 1898 or 1900; have you ever averaged up or made any estimation as to the average
340 price at which you purchased in this vicinity?

A. What timber averaged to cost me?

Q. The average of your price?

Mr. Billson: Objected to as irrelevant and as further objectionable on the ground of the necessary difference between the value of stumpage on account of the various distances from the logging streams.

A. The average cost to me, which is purchasers' railroad price, was $1.21 per thousand as near as I could pick out similarly located timber and of similar quality on the forty million that I bought and sold during this time, a portion of it in the same town with these 40's, and the average I sold during that time for cash and cut where I carried the timber at $2.50 per thousand, as in this instance.

Mr. Jaques:

Q. Where timber was sold under terms like those in this contract in evidence here,—under such contracts it would be customary to receive larger prices?

A. I have always been able to get larger prices; it gave a party without much capital a chance to handle logs.

Q. To sell logs and get a better price for the logs and pay for the timber with the money got out of selling the logs?

A. Yes, sir.

Q. Mr. Baker gave some testimony about tamarack being cut on these premises; did you ever sell or authorize anyone to cut tamarack on this 40? A. No, sir.

Q. Your contract with Baker simply covered pine?

A. Yes, sir.

Q. And your deed to O'Brien? A. Simply covered pine.

341 W. H. Smallwood, a witness on behalf of the defendants for whom H. H. Hoyt and S. H. Moer, have appeared and answered, being duly sworn, testifies as follows:

Direct Examination

By Mr. Hoyt:

Q. Mr. Smallwood, where do you reside? A. At Duluth.

Q. What is your occupation? A. Attorney-at-law.

Q. How long have you lived in this vicinity?

A. Something over fourteen years.

Q. Have you had more or less experience in land matters with the department here,—before the local land office of the United States in Duluth?

A. I have made that practice a specialty for the last ten years.

Q. During your practice here in that business have you had more or less experience or inquiry as to land scrip; scrip to take up land? A. I have.

Q. Do you know Mr. Phipps, the Land Agent of the Northern Pacific Road? A. Not personally.

Q. Have you had any experience in reference to the value of scrip? A. I have.

Q. Are you familiar with the Act of July 1st, 1898, having reference to lands of the Northern Pacific Railway Company?

A. I think I am.

Q. Did you have any correspondence with Mr. Phipps as to the value of that scrip,—whether it could be obtained?

342 A. Yes, I had some about land; it was in the latter part of the winter of this present year; some of my clients had purchased some and wanted me to write about it.

Q. Did you get a reply from Mr. Phipps?

A. Yes; I am not able to find it, but I know distinctly what was in it.

Q. Have you examined your letter files in your office two or three times?

A. Yes, I examined thoroughly. I must have burned it.

Q. You are satisfied that it is not in your office?

A. I am not able to produce it.

Q. Can you state the substance of it? A. I can.

Q. What was it?

Mr. Billson: This question is objected to as irrelevant on the ground that it is not proper evidence as to the value of the scrip, if that is the object of the testimony.

A. Some of my clients here, Lammers Brothers, were locating some lands. We bought some scrip, what we call scrip, that is, the Northern Pacific right of selection of land in lieu of land surrendered, under the law of July, 1898, and thinking the price was rather high and there being more inquiry, I wrote to Mr. Saunders to ascertain whether or not we could by buying a larger quantity of this, get a better price, the price we had paid being $5 and $5.50, and he wrote me back that he had referred the matter to Mr. Phipps. Mr. Phipps answered (at least the letter bore his signature and came through the Land Department of the Northern Pacific), and stated that there were two classes, one location made on unsurveyed and one on surveyed lands, and that if we wanted selections on the unsurveyed lands the price would be $7.50, but the other they could furnish for about $5.00 an acre. I had written him that my client wanted several thou-
343 sand acres, but he said he would make no difference as to quantity at all.

Cross-Examination

By Mr. Kerr:

Q. You bought some previously to this?

A. My clients had.

Q. How much did you pay?

A. My recollection now is $5.00, but I am not sure. It ran from $4.50 to $5.50; it varied owing to what other scrip was.

Q., You say you bought this scrip for other clients?

A. No I helped them locate it.

Q. What form did it take?

A. It is a selection made on a blank that they have prepared for it. They select like all indemnity lands in lieu of certain lands surrendered.

Q. Don't you know that this scrip located on unsurveyed land is what is known as "Mount Ranier Forest Survey Reserve" and not the Act of 1898 Scrip?

A. I don't know; I understood this to be under the same law; they located under the same law. It may be that is true.

Q. It would make no difference whether you located under the Act of 1898 on unsurveyed or surveyed land?

A. No, except that they would locate it themselves. They always locate themselves and then transfer to other parties; they would not make the location through their agents.

Q. Don't you know that you can buy lands in the limits of Forest Reserve which gives you the same right of selection on public lands at $3.50 per acre?

A. I know I paid $4.50 for some I bought yesterday of Coffin. He stated that would be the price and I went to another dealer and I could not do so. I would like to say further in answer to that, that my clients thought that that particular indemnity selection was better because it
344 gave title sooner than the ordinary Forest Reserve or Soldiers' Additional Homestead.

Q. You have no idea as to the quantity of it the Northern Pacific had? A. No, I have not.

Q. The price they would sell at would depend on the quantity they had? A. Yes, sir.

Frank M. Spears, being duly sworn as a witness on the part of the Defendants for whom H. H. Hoyt and S. H. Moer have appeared and answered, testifies as follows:

Direct Examination

By Mr. Hoyt:

Q. Mr. Spear, where do you live? A. In Duluth.

Q. How long have you lived here? A. Nine years.

Q. What is your business? A. Abstracting.

Q. You are abstracting titles of lands in this vicinity?

A. Yes, sir.

Q. How long have you been engaged in the abstracting business? A. Twelve years.

Q. Are you familiar with the descriptions of lands that appear on the Tract-books in the local U. S. Land Office at Duluth? A. Yes, sir.

Q. Will you look at that list and state what it is? (Hands witness list referred to.)

A. That is a list of land taken from the Tract-book at the United States Land Office in Duluth, showing lands vacant January 1st, 1888; lands never taken and vacant to-day, in the second indemnity limits of the Northern Pacific.

Q. How far east did you go? A. Range 11.

345 Q. Where did you commence? A. At Range 20.

Q. You commenced at Range 20 and ran to Range 11? A. Yes, sir.

Q. And that is the land you found vacant? A. Yes, sir.

(The paper referred to is marked Defendants' Exhibit "L-L" and is offered in evidence.) (See page 1021 this record.)

Mr. Kerr: Exhibit "L-L" is objected to as incompetent, irrelevant and immaterial and as not the best evidence.

Mr. Hoyt:

Q. I call your attention to Exhibit "I" and would like to have you state what that represents.

A. The map shows the line or railroad of the Northern Pacific Railroad Company and the place limits, first and second indemnity, in the State of Minnesota.

Q. What are these red lines?

A. Lands lost by the Northern Pacific Railroad Company.

Q. In the Second Indemnity? A. In the place limits.

Q. What are these yellow lands?

A. Lands selected by the Northern Pacific Railroad Company in the First and Second Indemnity Limits and afterwards relinquished by them.

Q. What are the green lands?

A. Lands selected by the Northern Pacific Railroad Company in lieu of lands claimed to have been lost through selection of the Lake Superior & Mississippi Road.

Q. And the black lines? A. Lands still vacant.

346 Mr. Kerr: All of the above questions are objected to as incompetent, irrelevant and immaterial, and not the best evidence.

Jules J. Durage, a witness on behalf of the Defendants for whom H. H. Hoyt and S. H. Moer have appeared and answered, being duly sworn, testifies as follows:

Direct Examination

By Mr. Hoyt:

Q. How long have you lived in this city?

A. Seventeen years.

Q. What is your occupation? A. I am a Civil Engineer.

Q. How long have you been in that business?

A. Forty-two years.

Q. What is your age? A. Sixty-two years.

Q. Have you been requested to make surveys and draw certain lines in reference to the Northern Pacific Railroad in the vicinity of Duluth?

A. I did not survey the lands, I simply drew lines from the map made by the Northern Pacific Railroad Company.

Q. Showing the place limits and first and second indemnity?

A. I don't know what you call it; the 10, 20, 30 and 40 mile limits.

Q. Don't you know what the place limits of a railroad grant are? A. Well, yes, sir, I should know.

Q. Don't you know the Northern Pacific has first and second indemnity limits to its grant? A. Yes, sir.

Q. Have you the map here? A. Yes, sir.

Q. Is this a copy of the map you took it from? A. Yes, sir.

It is stipulated that the map referred to, and marked Defendants' Exhibit "M-M", in so far as it purports to show line of definite location of the Northern Pacific Railroad Company, and in so far as it purports to show limits of the land 347 grant by lines following lines of government subdivisions, is a true and correct copy of the certified copy of the map prepared by the Commissioner of the General Land Office, but that all the lines upon the map not following the section lines have been placed upon it by the witness.

Q. Go on and state what the map is?

A. I took a scale of the map, the original map, and constructed those lines with a scale of the original map. Working on the 10-mile limits I took the radius on the scale of the original map and I found the limits described by taking that scale and those diameters all inside of the lines as laid down on original map; then, I also found that those lines did not follow the rule as laid out in Land Office Decisions, Volume 5, page 468.

Q. In speaking about these lines what do you mean? The place limits, first and second indemnity?

A. Yes, sir, the limit lines.

Q. Go on? A. The limit lines are inside of their lines.

Q. I wish you would distinguish what you would call your lines from the other lines. Can you illustrate?

A. In place of taking their tangent from A to B on the map and from B to C I broke the tangents in two parts which follow more closely the sinuosity of the railroad as required: As, for, instance, between distance from A to B I make two lines, A-W and W-B, and I also break the line between B and C in two lines which gives me for illustration on the 30-mile limit a line described by letters B-W-X No. 2 T. And what is true of the 30-mile limit would also be true as to 40-mile limit,—would be natural parallel lines. Then taking this 30-mile limit as an illustration, all the lines comprising 348 the line O-L and the line V-W-8 No. 2 T will be entirely outside of the proper 30-mile limit as required by the Secretary's Decision, page 468, of Volume 5, Land Office Decisions.

Q. Outside of the 30-mile limit?

A. And the same thing would apply to the 20 and 40-mile limits.

Q. Describe your first twenty-five miles?

A. The first twenty-five miles; I follow the method adopted by the Northern Pacific Railroad Company of laying all lateral lines at right angles to the terminal, A-B, we have for the 10-mile limit the rectangle A-C-F-B; for the twenty-mile limit the rectangle A-H-IB; for the 30-mile limit the rectangle A-O N-B; and for the 40-mile limit the rectangle A-P-Q-B.

Twenty-five miles described in Section B-C. The ten-mile limit is shown by B-E-D-C; the 20-mile limits by E-J-K-C; the 30-mile limits by B-M-L-C; and the 40-mile limit by B-R-S-C.

Q. Your experience as an engineer satisfies you that these lines correctly show the limits of the Northern Pacific Railroad Grant according to the decision laid down in Volume 5, page 468? A. Yes, sir.

Mr. Hoyt: Defendants' Exhibit "M-M" is offered in evidence. (See page 1022, this record.)

Mr. Kerr: It is objected to as incompetent, irelevant and immaterial, so far as the lines thereon testified to by the witness, Durage.

Mr. Kerr: Complainants offer in evidence a certified copy of a certain map on file in the office of the Commissioner of the General Land office purporting to show the general route of the Lake Superior & Mississippi Railroad, and same is marked "Complainants' Exhibit 69". (See page 665 this record.)

349 Mr. Kerr: Complainants offer in evidence paper marked "Complainants' Exhibit 70", being a certified copy of a letter addressed to the Commissioner of the General Land Office by the Secretary of the Interior, under date of March 19th, 1901, correcting the laying down of certain withdrawal limits upon the line of general route of the Lake Superior & Mississippi Railroad. (See page 667 this record.)

Mr. Kerr: Complainants offer in evidence a map, marked "Complainants' Exhibit 71", being a certified copy of the map prepared by the Commissioner of the General Land Office, purporting to show the limits on each side of the line of general route of the Lake Superior & Mississippi Railroad and the limits on each side of the line of definite location of that road. (See page 672 this record.)

Mr. Jaques: Each one is objected to as incompetent, irrelevant and immaterial.

Mr. Kerr: Complainants offer in evidence as "Complainants' Exhibit 72", a certified copy of the letter addressed to the Secretary of the Interior by the Commissioner of the General Land Office, under date of March 4th, 1899, relative to bases for second indemnity selections. (See page 674 this record.)

Mr. Jaques: It is objected to as incompetent, irrelevant and immaterial.

Mr. Kerr: Complainants offer in evidence a paper marked "Complainants' Exhibit 73", being a certified copy of the Statement "E" attached to and made part of the Report of the Commissioner of the General Land Office to the Secretary of the Interior under date of May 3rd, 1900. (See page 678 this record.)

Mr. Hoyt: Objected to as incompetent and immaterial and because it appears on its face to be a part of a report not put in.

350 George H. Reif, being duly sworn as a witness on the part of the complainants, testifies as follows:

Direct Examination

By Mr. Kerr:

Q. Mr. Reif, where do you reside? A. At White Bear.

Q. What is your position in connection with the Northern Pacific Railway Company?

A. Clerk in the Land Department.

Q. I hand you schedule of lands headed, "List of losses within St. P. & D. 10 and 20 Mile Limits outside the line of withdrawal on General Route of May 26, 1864, as defined by the Hon. Commissioner of the General L. O." and ask you if you prepared that schedule? A. Yes, sir, I did.

Q. From what source did you obtain the data?

A. I took the map,—this map right here.

Q. You refer to "Exhibit 71?" A. Yes, sir.

Q. Being a certified copy of the map prepared by the Commissioner of the General Land Office showing the 10-mile limits on each side of the general route of the Lake Superior & Mississippi Railway,—is that correct?

A. Yes sir, that is correct.

Q. Do any of these lands described in this list which you have prepared fall within these 10-mile limits on the line of general route as shown on this copy?

A. They fall outside of the 10-mile limits of the general route.

Q. Where do they fall with reference to the limits of definite location of the Lake Superior & Mississippi Railroad as shown on this map marked "Exhibit 71?"

A. They fall outside of the limits of definite location; 351 they fall outside of the 10-mile limits on line of definite location; they are in the 10 and 20-mile limits.

Q. Do I understand all these lands are situated outside of the 10-mile limits on the general route and also outside of the 10-mile limits on definite location, but within the 10 and 20 mile, or first indemnity limits, on definite location of the Lake Superior & Mississippi Railroad? A. They are.

Mr. Kerr: I ask to have the list prepared by the witness marked "Complainants' Exhibit 74," and offer the same in evidence. (See page 689, this record.)

Mr. Hoyt: Objected to as incompetent, irrelevant and immaterial, and as not the best evidence. Complainants' [acquise] in the objection. Exhibit withdrawn.

Mr. Kerr:

[—] I call your attention to Schedule marked "Defendants' Exhibit J" and to Schedule marked "Complainants' Exhibit 73" and ask you if you have compared the list of lands prepared by you and marked "Complainants' Exhibit 74," with the list of lands contained in Defendants' Exhibit "J" and Complainants' Exhibit 73"? A. I have.

Q. Are any of the lands described in the list prepared by you described in Exhibits "J" or Exhibit "73?"

A. They are not.

Lee W. Farmer, being duly sworn as a witness on behalf of the Complainants testifies as follows:

Direct Examination

By Mr. Billson:

Q. Mr. Farmer, you reside in Duluth, do you?

A. Yes, sir.

Q. What is your age? A. Twenty-one years.

(Witness is shown letter marked "Complainants Exhibit 75" being a letter under date of February 26th, 1901, from the Commissioner of the General Land Office to the local Land Officials at Duluth, relating to the timber and stone entry of William J. Pierce, and witness is asked if said letter is a true copy of the letter on file in the local United States Land Office at Duluth.) 352

A. It is.

Q. Do you know it to be a copy from your own personal knowledge by having compared it with the original on file there? A. Yes, sir.

Mr. Billson: Exhibit "75" is offered in evidence. (See page 694, this record.)

Mr. Jaques: Objected to as incompetent, irrelevant and immaterial.

(The witness is also shown instrument marked Complainants' Exhibit "76" and is asked to state what it is.)

A. This is a copy of the letter on file in the local United States Land Office at Duluth.

Mr. Billson: Do you know it to be a true copy?
A. Yes, I made it myself.

Mr. Billson: The document marked Exhibit "76," being a letter of November 2nd, 1866, from the Commissioner of the General Land Office to the Register and Receiver at Duluth, relative to the withdrawal of lands upon the definite location of the Lake Superior and Mississippi Railroad, is offered in evidence. (See page 698, this record.)

(The witness is also shown paper marked Complainants' Exhibit "77" and is asked what it is.)

A. That is also a true copy of the letter on file in the local Land Office of the United States at Duluth.
Q. Did you make it yourself and do you know it to be correct? A. Yes, sir.

353 Mr. Billson: Exhibit "77" referred to by witness is offered in evidence. (See page 699, this record.) It being a copy of the letter of May 20th, 1872, from the Commissioner of the General Land Office to the Register and Receiver at Duluth, relative to the withdrawal of lands for the benefit of the Lake Superior & Mississippi Railroad.
Mr. Hoyt: Exhibit "76" and "77" objected to as incompetent, irrelevant and immaterial.

George H. Reif, recalled on behalf of complainants, testifies as follows:

Mr. Kerr:
Q. Calling your attention to the list prepared by you, and marked "Exhibit 74," headed "List of Losses within St. P. & D. 10 and 20 mile limits outside the line of withdrawal on general route of May 26, 1864, as defined by the Hon. Commissioner of the General L. O."—do you mean the St. Paul & Duluth?

Mr. Hoyt: Objected to as leading.

A. I mean that the St. Paul & Duluth is the same as the Lake Superior & Mississippi and is its successor in interest.

Mr. Kerr: These lands described in this list as within the limits of the St. Paul & Duluth are within the limits of the Lake Superior & Mississippi?

Mr. Hoyt: Objected to as leading.

A. Yes, sir.

354 That on the 26th day of October, A. D. 1901, there was filed with said Clerk a Stipulation of Facts in said

cause; which said Stipulation is, in words and figures, as follows, to wit:

United States Circuit Court, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants,
vs. In Equity.
Waldo A. Avery et al., Defendants.

It is stipulated in the above entitled cause that the withdrawal diagrams offered in evidence by the complainants as Exhibits "3," "4" and "5" [respectfully] correctly indicate the definite location of the Northern Pacific Railroad between Fargo, Dakota, and a point near Ashland in the State of Wisconsin, as established by the maps of definite location referred to in the third and fourth paragraphs of the complaint, and admitted in the answers.

It is further stipulated that the blue print map referred to by the witness Earl L. Marvin and introduced in evidence as complainants Washington Exhibit 3 is a true transcript of original diagrams and maps on file in the Interior Department, showing the several limits of the grant to the Northern Pacific Railroad Company and of the several conflicting railroad grants in the State of Minnesota and of the Indian Reservations in said State conflicting with said grant. That in other respects the said map, Washington Exhibit 3, is immaterial to the issues of the case.

It is further stipulated, that having no materiality to the issues of the case other than is covered by the stipulations herein contained, complainants Exhibits 1 and 2, plaintiffs' Washington Exhibit 3, and defendant's Exhibit I may
355 be omitted from any transcript or return of the testimony made in this cause.

Dated October 12th, A. D. 1901.

H. OLDENBERG,
BILLSON, CONGDON & DICKINSON &
J. W. KERR,
Attorneys for Complainants.
H. H. HOYT & S. H. MOER,
JAQUES & HUDSON,
TOWNE & HARRIS,
M. H. STANFORD,
JOHN G. WILLIAMS,
Attorneys for Defendants.

Indorsed: Filed Oct. 26th, 1901. Henry D. Lang, Clerk. By Thos. H. Pressnell, Deputy. Filed Nov. 27, 1901. John D. Jordan, Clerk.

WASHINGTON EXHIBIT No. 1: Having reference to the limits of the Northern Pacific Railroad Company in Minnesota.

Place Limits N. P. Ry. Co. State of Minnesota.				Losses to Grant of N. P. R.								
Titles of the Adjustment Sheets as Compiled by the G. L. O.		Total Area.	Total Loss.	Prior to 1864.			Subsequent to July 2, 1864.			Listed by N. P.		Patented
				L. S. & M. 10 M.	St. I	Swamp, P. E. etc	L. S. & M. 10-20 M.	P. Entries, etc.	White Earth I. R.	Properly	Erroneously.	Properly.
Sup. No. 1. L. S. & M 30 M. N. P. 20 M.	East Term	585.35 585.35	385.24 385 24			385.24				200.11 200.11		
Sup. No. 2. L. S. & M. 20 M. N. P. 20 M.	East Term.	13,013.62 13,013.62	13,013 62 13,013 62			6,599.65	6,413.97					
Sup. No. 3. L. S. & M. 10 M. N. P. 20 M.	East Term.	2,351.94 2,351.94	2,351.94 2,351.94	1,305.38		1,046.56						
"A" Spl. "Clear" N. P. 20 M.	East Term.	47,548.— 47,548.—	40,556.41 40,556.41			12,983.57		27.572.84		761.68		
No. 1. "Clear" N. P. 20 M.	4th P. M.	428,334.19 428,434.19	188,427.68 188,427.68			183,066.18		5.361.50		13,241.11 13,241.11		221,323.80 221,323.80
No. 2. L. S. & M. 10 M. N. P. 20 M.	East T. Junct.	66,200.35 66,200.35	66,199.35 66 199.35	46,944.84		19.454.51						
No. 3. L. S. & M. 10 M. N. P. 20 M	West T. Junct.	158,799.91 158,799.91	158,639.91 158,639.91	105,082.59		53,557.32						
No. 4. L. S. & M. 20 M. N. P. 20 M.	East T. Junct.	34,993.29 34,993.29	34,993.29 34,993.29			9.118.85	25,874.44					
No. 5. L. S. & M. 20 M. N. P. 20 M.	West T. Junct.	157,347.90 157,347.90	157,347.90 157,347.90			75,656.76	81,691.14					
No. 6. L. S. & M. 30 M. N. P. 20 M.	West T. Junct.	185,086.67 185,086.67	82,740.17 83.340.17			83,340.17						3,440.86 3,440.86
No. 7. L. S. & M. 30 M. N. P. 20 M.	East T. Junct.	3,625.56 3,625.56	855.75 855.75			855.75						
No. 8. St. P. & N. P. 15 M. N. P. 20 M.	4th P. M. and 5th P. M.	166,446.69 166,446.69	151,835.79 166,445.64[1]		166						10,515.89	
No. 9. "Clear" N. P. 20 M.	5th P. M.	1,127,423.08 1,127,864.08	306,784.74 306,893.74			100,766.45		133,718.09	72,409.20	1,969.85 1,969.85	4,662.56 4,662.56	765,704.62 811,036.62
No. 10. St. Vin. Ext. St. P. M. & M. 20 M. N. P. 20 M.		213,772.23 214,368.44	47,025.43 47,025.43			5,498 19		41,527.24		593.05 593.05	80.— 80.—	164,977.03 165,573.24
No. 11. St. Vin. Ext. St. P. M. & M. 10 M. N. P. 20 M.		259,743.26 259,743 26	53,990.82 53.990.82			9,991.03		43,991.79		806.60 806.60		4,256.11
Grand Totals		2,865,262.04 2,866,409.25	1,304,292.29 1,320,466 89	153,332.81	166	562,120.23	113,979.55	252,179.46	72,409.20	16,810.72 17,572.40	15,258.45 4,742.56	1,155,346.31 1,205,630.63

Remark—The red figures in this Statement represent the figures of the G. L. O.
E. L. MARVIN.

United States Circuit Court
District of Minnesota,
Fifth Division.
In Equity.

John A Humb

Waldo A
Complainant
to the Deposi
[Notarial Seal
Notary Pub

COMPLAINANTS' EXHIBITS.

ence to the limits of the Northern Pacific Railroad Company in Minnesota. Offered in evidence at page 157, this record.

Losses to Grant of N. P. R.														
Prior to 1864.			Subsequent to July 2, 1864.			Listed by N. P.		Patented to N. P.		Patented to other Roads but charged to N. P.	Vacant.	Disposed of Subsequent to D. L. of N. P.	Entries and filings otherwise subject to Grant.	Pending.
& M. M.	St.	Swamp, P. E. etc	L. S. & M. 10-20 M.	P. Entries, etc.	White Earth I. R.	Properly	Erroneously.	Properly.	Erroneously.					
		385.24				200.11 200.11								
		6,599.65	6,413.97											
305.38		1,046.56												
		12,983.57		27,572.84		761.68					761.68	5,326 76		903.15 6,229.91
		183,066.18		5,361.50		13,241.11 13,241.11		221,323.80 221,323.80			122.30 122.30		1,820.35 1,820.35	3,498.95 3,498.95
944.84		19,454.31									1.— 1.—			
082.59		53,557.32									160.— 160 —			
		9,118.85	25,874.44											
		75,656.76	81,[illegible]1.14											
		83,340.17						3,440.86 3,440.86		96,499.63 96,499.63	920.— 320.—	1,200.— 1,200.—	286.01 286.01	
		855.75								2,729.81 2,729.81	40.— 40.—			
	166						10,515.89				1.05 1.05			4,083.96
		100,766.45		133,718.09	72,409.20	1,969.85 1,969.85	4,662.56 4,662.56	765,704.62 811,036.62	360.— 360.—		958.60 958.60	160.— 160.—	42.78 42.78	46,779.93 1,779.93
		5,498.19		41,527.24		593.05 593.05	80.— 80.—	164,977.03 165,573.24	8.75 8.75		80.— 80.—		200.— 200.—	807.97 807.97
		9,991.03		43,991.79		806.60 806.60		4,256.11		200,168.21 200,168.21				4,777.63 521.52
332.81	166	562,120.23	113,979.55	252,179.46	72,409.20	16,810.72 17,572.40	15,258.45 4,742.56	1,155,346.31 1,205,630.68	368.75 368.75	299,397.65 299,397.65	3,043.58 1,682.95	6,686.76 1,360.—	2,349.14 2,349.14	60,851.59 12,838.28

United States Circuit Court
District of Minnesota,
Fifth Division.
In Equity.

John A Humbird and Frederick Weyerhauser,
Complainants,
vs.
Waldo A. Avery et al., Defendants.
Complainant's Washington Exhibit No. 1,
to the Deposition of Earl L. Marvin.
[Notarial Seal.] E. F. WHITE,
Notary Public for the District of Columbia.

PAGE CUT OFF

WASHINGTON EXHIBIT No. 2: Relating to the firemnity limits of said Railroad. Offered in evidence at page 157 oirecord.

Titles of the Adjustment Sheets as compiled by the G. L. O		1st Indemnity Limits			Ry. Co.	State of Minnesota.		
		Total Area	Area Disposed of	N. P Seletions Unpaen'd	perly oved to arged to . P.	Erroneously Approved to N. P.	Vacant.	Pending in Contest
Sup No. 1 L. S. & M. 30 M.	East	7,525.70	4,822.07	2,703.				
N. P. 20 M.	Dul. Term.	7,525.70	4,822.07	2,703.				
Sup. No. 2 L. S. & M. 20 M.	East	11,745.45	11,745.45					
N. P. 30 M.	Dul. Term.	11,745.45	11,745.45					
Sup. No. 3 L. S. & M. 10 M.	East	1,240.—	1,240.—					
N. P. 30 M.	Dul. Term.	1,240.—	1,240.—					
"A" Spl. "Clear"	East	84,741.49	75,657.71		31.75		7,122.51	1,929.52
N. P. 30 M.	Dul. Term.	84,741.49	66,706.11	7,002.	31.75		120.34	10,881.12
No. 1 L. S. & M. 30 M.	West	74,900.61	73,116.36	80.	949.94			754.31
N. P. 30 M.	Dul. Term.	74,900.61	73,116.36	80.	949.94			754.31
No. 2 L. S. & M. 20 M.	West	67,839.20	67,437.97		320.—		81.23	
N. P. 30 M.	Dul. Term.	67,839.20	67,437.97		320.—		81.23	
No. 3 L. S. & M. 10 M.	West	70,172.13	70,172.13					
N. P. 30 M.	Dul. Term.	70,172.13	70,172.13					
No. 4 "Clear"	4th P. M.	234,050.43	165,617.57	3,863	3,942.86		1,362.96	4,263.23
N. P. 30 M.		233,939.18	165,790 13	3,863	3,964.11		1,282 96	4,038.17
No. 5 St. P. & N. P. 20 M.	4th P. M.	16,892.03	16,892.03					
N. P. 30 M.		16,892.03	16,892 03					
No. 6 St. P. & N. P. 15 M.	4th P. M.	17,614.90	16,353.38			80.—		1,181.52
N. P. 30 M.		17,494.08	17,414.08			80.—		
No. 7 St. P. & N. P. 10 M.	4th P. M.	13,452.74	13,452.74					
N. P. 30 M.		13,452.74	13,452.74					
No. 8 St. P. & M. P. 6 M.	4th P. M.	21,980 59	21,860.34				120.25	
N. P. 30 M.		21,980 59	21,860.34				120.25	
No. 9 "Clear"	5th P. M.	412,760 20	183,623.68	840	,404.03		272.24	620.25
N. P. 30 M.		412,956.55	183,793.03	840	,431.03		272.24	620.25
No. 10 St. P. & N. P. 6, 10 & 15 M.	5th P. M.	44,006 12	42,629.—				84.—	1,293.12
N. P. 30 M.		43,886.10	43,842.10				44.—	
No. 11 St. P. & N. P. 20 M.	5th P. M.	17,252.35	14,937.30				40.—	2,275.05
N. P. 30 M.		17,252.35	14,977 30					2,275.05
No. 12 St. Vin. Ext. St. P. M. & M. 20 M.		200,461.49	51,525.16	1,789	3,940.86		600.—	102,605.86
N. P. 30 M.		200,461.49	139,152.59	1,949	3,304.79		440.—	12,614.50
No. 13 St. Vin. Ext. St. P. M. & M. 10 M.		194,567.07	22,740.63		,574.20		442.35	113,809.89
		194,587.72	124,671.76	539	7,965.55		40.—	11,371.05
Grand Totals.		1,491,202.50	853,823.52	9,277	,163.64	80.—	10,125.54	228,732.75
		1,491,067.41	1,037,086.19	16,978	1,967.17	80.—	2,401.02	42,554.45

Remark—The red figures in this Statement represent the figures of the G. L. O.
E. L. MARVIN.

United States Circuit
District of Minnesota
Fifth Division.
In Equity.

John A. Humbird and Frederick Weyerhauser, Complainants,
vs.
Waldo A. Avery et al., Defendants.
Complainant's Washington Exhibit No. 2, to the Deposition of Earl L. Marvin.
[Notarial Seal.] E. F. WHITE,
Notary Public for the District of Columbia

358 WASHINGTON EXHIBIT NO. 3.

Being a Blue Print copy of a Composite Map compiled in the Northern Pacific Railway Office from certified copies of the maps of withdrawal in Minnesota of that and conflicting roads. Offered in evidence at page 159 of this record, and omitted as per stipulation. (See page 354, this record.)

359 WASHINGTON EXHIBIT NO. 4.

Offered in evidence at page 159 of this record:

Recapitulation of Minnesota Adjustment, Place and First Indemnity Limits.

		Acres.
Total place limits, Minnesota		2,866,409.25
Lost by reason of prior grants, Indian and Military reservations, private entries, State swamp, etc., to be indemnified		1,320,466.89
Balance subject to grant...		1,545,942.36
And of which there have been properly patented or charged to N. P....................	1,505,028.28	
Erroneously patented	368.75	
Properly listed by N. P.......	17,572.40	
Erroneously listed by N. P....	4,742.56	
Disposed of subsequent to Definite Location	1,360.00	
Entries allowed but otherwise subject to grant............	2,349.14	
Pending in contest...........	12,838.28	
Vacant	1,682.95	1,545,942.36
[360] Total area, "First indemnity Limits," N. P...		1,491,067.41
Disposed of by reason of prior grants, Indian and Military reservations, private entries, State swamp, etc..........		1,037,086.19
Balance available as indemnity And which there have been properly patented to N. P....................	391,967.17	
Erroneously patented	80.00	
Selected but yet unpatented...	16,978.58	

Vacant	2,401.02	
Pending in contest	42,554.45	453,981.22
The total loss in "Place" being		1,320,466.89
Of which there were lost prior to July 2, 1864	881,898.68	
And subsequent to July 2, 1864	438,568.21	1,320,466.89
And the maximum available indemnity in the First Indemnity Limits being		453,981.22
The deficiency of the "Place Limits" after applying the total available lands in the 1st Ind. Limits		866,485.67

361 COMPLAINANT'S DULUTH EXHIBITS.

Exhibit No. 1.

Being a Blue Print copy of the map of definite location of the Northern Pacific Railroad from Thomson Junction to Fargo. Offered in evidence at page 202 this record, and omitted as per stipulation. (See page 354, this record.)

362 COMPLAINANT'S EXHIBIT NO. 2.

Being a Blue copy of map of definite location of Northern Pacific Railroad from Thomson Junction to Ashland. Offered in evidence at page 203 this record, and omitted as per stipulation. (See page 354, this record.)

363 COMPLAINANT'S EXHIBIT NO. 3.

Being a copy duly certified by Commissioner of the General Land Office, of a map showing the limits of the Northern Pacific Grant from Thomson Junction to Fargo. Offered in evidence at page 204 this record.

FOLD OUT IS TOO LARGE TO BE FILMED

364a F. (Copy) T. R. B.
(4-207a) W. J. D.
C. M. W.
F. M. G.

Department of the Interior, General Land Office.
Washington, D. C., Oct. 27, 1887.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copy of a diagram showing the limits of withdrawals in the State of Minnesota for the benefit of the Northern Pacific Railroad Company ordered on maps purporting to show the general route of said company's road, received in this office with letters from the Secretary of the Interior dated Aug. 13, and Oct. 12, 1870, and on map purporting to show the definite location of said road received in this office with letter from the Secretary of the Interior dated November 20, 1871, is a true and literal exemplification of the diagram prepared by and now in the archives of this office.

In Testimony Whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(Seal.) WM. A. J. SPARKS,
Commissioner of General Land Office.

365 COMPLAINANTS' EXHIBIT NO. 4.

Being a copy duly certified by the Commissioner of the General Land Office, of a diagram showing the limits of Withdrawals in Wisconsin and Minnesota for benefits of N. P. R. R. Co. ordered on map purporting to show definite location from Junction of the St. P. & D. to Superior City. Offered in evidence at page 208 this record.

FOLD OUT IS TOO LARGE TO BE FILMED

366a F. (Copy) T. R. B.
(4-207 a) W. J. D.
C. M. W.
Department of the Interior F. M. G.
General Land Office,
Washington, D. C., Oct. 27, 1887.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copy of a diagram showing the limits of a withdrawal of lands in the States of Minnesota and Wisconsin for the benefit of the Northern Pacific Railroad Company ordered on map purporting to show the definite location of said company's road from a junction with the St. Paul and Duluth Railroad, in Minnesota, to Superior City, Wisconsin, received in this office from the Secretary of the Interior July 6, 1882, is a true and literal exemplification of the diagram of said withdrawal prepared by and now in the archives of this office.

In testimony whereof, I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

[Seal] WM. A. J. SPARKS,
Commissioner of General Land Office.

367 COMPLAINANTS' EXHIBIT NO. 5.

Being duly certified copy of a diagram showing limits of a withdrawal for benefit of N. P. R. R. Co. in Wisconsin and Minnesota on map purporting to show definite location from Superior to Sec. 15-47-2 West, in Wisconsin. Offered in evidence at page 208 this record.

FOLD OUT IS TOO LARGE TO BE FILMED

368a (Copy) T. R. B.
F. (4-207a.) W. J. D.
C. M. W.
Department of the Interior, F. M. G.
General Land Office.
Washington, D. C., Oct. 27, 1887.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed copy of a diagram showing the limits of a withdrawal for the benefit of the Northern Pacific Railroad Company in the States of Wisconsin and Minnesota ordered on map purporting to show the definite location of said company's road, from Superior City to a point in section 15, Township 47 N. Range 2 W., 4th P. M., Wisconsin, received in this office from the Secretary of the Interior July 6, 1882, is a true and literal exemplification of the diagram of said withdrawal prepared by and now in the archives of this office.

In testimony whereof, I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

[Seal] WM. A. J. SPARKS,
Commissioner of General Land Office.

369 COMPLAINANTS' EXHIBIT NO. 6.

Being a duly certified diagram showing conflicting limits of the grants for the Lake Superior and Mississippi, or St. P. & D. and N. P. Railroads. Offered in evidence at page 208 this record.

370a (Copy) F. W. C.
F. (4-207 a.) W. C. E.

Department of the Interior,
General Land Office.
Washington, D. C., April 28th, 1891.

I, Thomas H. Carter, Commissioner of the General Land Office, do hereby certify that the annexed copy of the diagram showing the conflicting limits of the grants for the Lake Superior and Mississippi or the St. Paul and Duluth, and the Northern Pacific Railroads, is a true and literal exemplification of that portion of the diagram on file and in use in this office, to which it relates.

In testimony whereof, I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

[Seal] THOMAS H. CARTER,
Commissioner of General Land Office.

371 COMPLAINANTS' EXHIBIT NO. 7.

Being pages 14 and 15 of a Statement showing land grants made by Congress to aid in construction of railroads, wagon roads, canals, and internal improvements, together with data relative thereto. Compiled from the Records of the General Land Office by order of the Secretary of the Interior. Offered in evidence at page 205 this record.

FOLD OUT IS TOO LARGE TO BE FILMED

FOLD OUT IS TOO LARGE TO BE FILMED

373 Complainants' EXHIBIT No. 8, Offered in Evidence at page 206, this record.

Pacific Rw. record.

Department of the Interior,
General Land Office,
September 15, 1870.

Register and Receiver,
Duluth, Minn.

Gentlemen: I transmit herewith a diagram showing the designated route of the Northern Pacific Railroad under Act July 2d, 1864; and by direction of the Secretary of the Interior you are requested to withhold from sale and location, preemption & homestead entry all the odd numbered sections of public lands falling within the limit of 20 miles as designated on this map.

You will also increase in price to $2.50 per acre the even numbered sections within those limits and dispose of them at that ratability under the pre-emption & homestead laws only. No private entry of the same being admissible until these lands have been offered at the increased price.

This order will take effect from the date of its receipt by you and you are requested to acknowledge without delay the time of its receipt.

Very respectfully,
JOS. S. WILSON, Commissioner.

EXHIBIT No. 9:—Offered in evidence at page 206, this record.
Pacific Rw. record.

Department of the Interior,
General Land Office,
November 7, 1870.

Register & Receiver,
Duluth, Minn.

Gentlemen: The Northern Pacific Railroad Company having filed an amended map of their line of route through
374 your district I herewith transmit a diagram showing the amended line and the 20-mile limit of the grant.

No change is made in the condition of the odd sections in those limits, the same having been heretofore withdrawn, a portion however, of the lands withdrawn are now thrown out of the limits of the road and should be again open to entry.

The pencil line on the map indicates the line of original withdrawal and the yellow one the present limit, the changes caused thereby are as follows:

1st. The even sections in Township 52, Ranges 16 & 17, West, south of the yellow limit are increased in price to $2.50

per acre and made subject to entry under the pre-emption & Homestead laws only and at that ratability.

2d. The even sections between the lead pencil line & the yellow line in Township 52 R. 18w Township 51 & 52, Range 19w, Township 51 R. 20w, also the N. 1-2 NE. 1-4 & NW. 1-4 Section 5, said Town & Range are reduced to 1.25 per acre.

3d. All the vacant lands between said lines in Township 51 R. 21, 22 & 23w are restored to pre-emption & Homestead Entry at that price.

To effect this restoration you will give due public notice of same for 30 days in the newspaper of largest circulation in your district. This advertisement you will have inserted not oftener than twice a week for four weeks, and the Receiver as disbursing agent will pay for same and charge in his disbursing account, transmitting proper vouchers.

You will acknowledge receipt of this by its date and notify us of the date of restoration herein directed and transmit copy of paper containing advertisement.

Very respectfully,
JOS. S. WILSON, Commissioner.

375 EXHIBIT No. 10:—Offered in evidence at page 206, this record:

All Official Letters must be addressed to the "Commissioner of the General Land Office," and in replying to Letters from the office, the initial letter on the left hand corner should be referred to.

Pacific rrd. record.
W. K. M.

F. Department of the Interior.
Vol. 1 page 537.

General Land Office,
Washington, D. C., December 12th, 1871.

Register and Receiver,
Duluth, Minn.

Gentlemen: Referring to my letter to you of 15th September, 1870, transmitting a map of the designated line and 20-mile limit of the land grant of the Northern Pacific Railroad and directing withdrawal of lands therefor, I now enclose you a map showing the line of the road as constructed together with the definite 20-mile limits of the grant and the additional 10-mile indemnity limits as granted under the original act of July 2d, 1864 and also the additional 10-mile indemnity limits granted by the joint resolution of 31st May, 1870. These limits are respectively designated as the 20, 30 & 40 mile limits.

I have also designated the limits filed in my letter to you of the 15th September, 1870, and you are now directed to withhold from sale or location, pre-emption or Homestead Entry all the odd numbered sections within the limits designated on the map herewith and not heretofore withdrawn.

You will also increase in price to $2.50 per acre and dispose of under the pre-emption and Homestead laws only, the even numbered sections formerly outside of the 20 mile limits as designated on the prior map but now within that limit as shown on the diagram herewith. The map of constructed line was filed in this office on 21st November, from which
376 time the right of the road attaches, according to the
terms of the granting act of July 2d, 1864, Stat. Vol. 13, page 365.

This order, however, does not affect the status of bona fide pre-emption or Homestead settlers who may have initiated their claims prior to said 21st November and such persons will be allowed to prove up their entries either for odd or even sections at 1.25 per acre according to law.

You will observe by reference to the act of 31st May, 1870, that the additional indemnity lands therein granted are only for making up deficiency caused within their granted or 20 mile limits, by the disposal of lands in odd sections since the passage of the act of 2d July, 1864, and upon the contingency that such deficiency lands cannot be obtained within the 10 mile indemnity limits prescribed by the act of 2d July, 1864. Nor can the company make selection of any lands heretofore reserved for the Lake Superior or Mississippi railroad or reserved or granted for any other purpose and which were still reserved at the date of definite location of the road & map thereof filed in this office.

Therefore in the examination of any lists of lands selected by the Company you will require that those in the 20 mile or granted limits and those in the 30 mile or first indemnity limits shall be presented in separate lists and you will eliminate or reject therefrom any lands to which the United States had not full title or which were "reserved, sold," granted or otherwise appropriated, and "not" free from pre-emption, or other claims or "rights at the time the line of said road was" definitely filed, and a plat thereof "filed [on] the office of the Commissioner of the General Land Office" which was 21st November, 1871.

It will be further observed that all mineral lands are selected from the operations of the grant, but that other
377 lands in lieu thereof are granted to be selected within
the deficiency limits first mentioned said "mineral" lands however, shall not be held to include iron and coal.

Be pleased to acknowledge the date of the receipt of this letter.

Very respectfully,
WILLIS DRUMMOND, Commissioner.

EXHIBIT No. 11: Offered in evidence at page 206, this record:

Refer in reply
to this initial.
"F".
1882.

S. R. E.
J. D. S.

53,115
73,190
89,517

Department of the Interior,
General Land Office,
Washington, D. C. Jany. 5th, 1883.

Register and Receiver,
Duluth, Minnesota.

Gentlemen: On the 6th July last, a map showing the definite location of the line of the Northern Pacific R. R. from a point on the main line in Sec. 1 T. 48 N. R. 17, W., 4th P. M., Minnesota, eastwardly to a point in Sec. 15 T. 47 N. R. 2W., Wisconsin, was received in this office with a letter from H. Villard, President of the Company, to the Secretary of the Interior, dated the 3rd of the same month.

This map was certified by the Chief Engineer, April 17th, and by the President of the Company, May 10th, 1882,

Sept. 19th, 1882, a map of twenty-five miles of constructed
road from the point first above mentioned to a point
378 near Bluff Creek in the City of Superior, Wis., in Sec.
32 T. 49 N. R. 13 W., was received with Department letter of the 18th, advising this office that said road had been accepted by the President.

In a letter dated Nov. 22nd, 1882, the Secretary directed that the withdrawals of land for the grant to said N. P. R. R. Co. be adjusted in accordance with the maps of definite location where there is no material variation from the line of general route, and where the road has been constructed.

The line of definite location upon which the section above mentioned has been constructed does not follow the general route exactly but the greatest divergence from that line is not more than five or six miles and, under the rulings in similar cases, this is not considered a material variation.

A diagram showing the twenty, thirty and forty mile limits of the grant opposite said constructed road adjusted to the line of definite location, as well as the twenty mile limit of the withdrawal on general route, has been prepared, and I enclose a copy of so much thereof as relates to lands in your district. Said limits are designated as follows:

The twenty mile definite limit is shown by a line shaded yellow; the thirty mile limit by a red line; the forty mile limit by a green line; and the twenty mile limit of general route by a blue line.

You are directed to withdraw from sale or entry all the odd numbered sections to the extent of the forty mile (green) line. The even numbered sections within the new twenty mile (yellow) limit will be held subject to pre-emption, homestead, or timber culture entry, (if naturally devoid of timber) only, and, when taken by pre-emption at the rate of $2.50 per acre, except where settlement was made prior to the date of your receipt of this order. The even numbered sections between
the new twenty and forty mile limits will also be held
379 subject to entry as above, but at the rate of $1 25/100
per acre.

The rights of the Lake Superior and Mississippi River R. R. Co. will not be affected by this order; neither will the withdrawal hereby made change the status of lands withdrawn on general route beyond the terminal limit shown on the diagram.

Report promptly the receipt of this letter and diagram.

Very respectfully,
L. HARRISON,
Acting Commissioner.

EXHIBIT No. 12: Offered in evidence at page 206, this record.

Refer in reply S. R. E.
to this initial J. D. S.
F.

Department of the Interior,
General Land Office,
Washington, D. C. June 18, 1883.

Register and Receiver,
Duluth, Minnesota.

Gentlemen: A map of definite location of the line of the Northern Pacific R. R. Company's road from a point on the main line in Sec. 1 T. 48 N. R. 17, W., Minnesota, eastward to a point in Sec. 15, T. 47 N. R. 2W., Wisconsin, was received in this office July 6th, 1882, with a letter, dated 3rd same month, from H. Villard, president of said company to the Secretary of the Interior, refered by the Chief Clerk of the Department July 5th, 1882.

Pursuant to the decision of the Hon. Secretary of the Interior, dated Nov. 22nd, 1882, you were directed by letter of Jany. 5th, 1883, to withdraw from sale or entry the odd numbered sections opposite that portion of the line shown on said

map upon which the road had been constructed, to the
380 extent of the twenty and thirty mile limits provided by
the granting act of July 2nd, 1864, (13 Stat., 365) and
the additional ten mile limit provided by the joint resolution
of May 31st, 1870, (16 Stats., 378).

Under date 17th ult., the Secretary decided that withdrawals of land opposite the line of definitely located road should be ordered, but, in future, only to the extent of the first indemnity belt, the limits of which are fixed by the Act of 1864 at thirty miles on each side of the line adopted through the States.

I transmit herewith a diagram showing the twenty (granted) and thirty mile (indemnity) limits opposite said definitely located line, east of the terminal limit of the withdrawal of 5th Jany. last, so far as they fall within your district, and also the twenty mile limit of the withdrawal ordered Sept. 15th, 1870, upon the map of general route of said road filed in this office.

The twenty mile limit of definite location is designated by a line shaded blue, and the thirty mile limit by one shaded brown, while the twenty mile limit of general route is shown by a line of a neutral tint.

You are directed to withdraw from sale or entry all the land in odd numbered sections to the extent of the thirty mile (brown) limit and not already withdrawn.

The even numbered sections falling within the new twenty mile (Blue) limit will be held subject to entry only under the pre-emption and homestead laws, or the timber culture act if subject to entry under said Act, and where taken by a pre-emption or commuted homestead entries payment must be made at the rate of $2 50/100 per acre, unless in the former case settlement was made prior to the date of receipt by you of the order increasing the price of the land.

No change will be made in the status of the even
381 numbered sections between the new twenty and thirty
mile limits.

The rights of the Lake Superior and Mississippi River R. R. Co. will not be affected by this order of withdrawal.

Report promptly the date of receipt by you of this letter and accompanying diagram.

Very respectfully.
N. C. McFARLAND, Commissioner.

EXHIBIT No. 13.—Offered in evidence at page 206, this record.

Refer in reply to 1883 S. R. E.
this initial 94031. J D S.
F.

Department of the Interior.
General Land Office,
Washington, D. C., Oct. 11th, 1883.

Register and Receiver,
Duluth, Minnesota.

Gentlemen: Under date 8th inst. the Hon. Secretary of the Interior instructed this office to withdraw lands for the benefit of the grant to the Northern Pacific R. R. Co. opposite the line of said Company's road as definitely located in the States to the extent of the second, or forty mile indemnity limits.

The withdrawal opposite said line as definitely located eastward from Superior, Wis., ordered by my letter to you dated 18th June last, included only lands in the twenty mile, or granted, limit and the first, or thirty mile, indemnity limit.

I enclose a diagram showing the limits of said withdrawal and the additional forty mile, or second indemnity limit (shown by a line shaded red) and pursuant to the instructions of the Hon. Secretary, you are directed to withdraw from sale or entry all the odd numbered sections falling within said forty mile limit, which should be laid down on the diagram
382 sent you June 18th.

No change will be made in the status of the even numbered sections falling within said forty mile limit.

You will promptly report the date of receipt of this order and the accompanying diagram.

Very respectfully,
N. C. McFARLAND, Commissioner.

EXHIBIT No. 14—Offered in evidence at page 212 this record:

Swamp Lands.

No. 4.

A list of Swamp and Overflowed Lands selected as inuring to the State of Minnesota, under the provisions of the Act of Congress approved Sept. 2d, 1850, as extended to said State by Act of March 12, 1860, in the District of Lands subject to sale at Duluth, viz.:

Entered in Tract Books.
Swamp Lands.

Parts of Sections.	Section	Township	Range	Surveyed Area		Unsurveyed Area		Total Area	
				Acres	Hdths	Acres	Hdths	Acres	Hdths
S ½ of SE. ¼	33	51	17	80					
N. E. ¼	33	52	17	160					
S. E. ¼	33	“	“	160					
E ½ of N. W. ¼	33	“	“	80					
E ½ of S. W. ¼	33	“	“	80					
S. W. ¼ of S. W. ¼	33	“	“	40					
N. E. fr. ¼	5	51	18	168	84				
N. W. ¼ of S. E. ¼	5	“	“	40					
S. W. fr. 14	5	“	“	160					
W ½ of N. E. ¼	7	“	“	80					
N. W. ¼ fr.	7	“	“	142	36				
Lot 3	7	“	“	31	45				
[383] S. W. ¼	15	“	“	160					
W ½ of S. E. ¼	15	“	“	80					
N. E. ¼ of S. E. ¼	15	51	18	40					
N. W. ¼ of N. E. ¼	17	‘	“	40					
N. E. ¼ of N. W. ¼	17	“	“	40					
S. W. ¼ of S. W. ¼	17	“	“	40					
E. ½ of S. E. ¼	17	“	“	80					
W ½ of N. W ¼	25	“	“	80					
N. W. ¼ of N. W. ¼	27	“	“	40					
N. E. ¼ of N. W. ¼	29	“	“	40					
Lot 1	29	“	“	58	25				
West Half	3	48	19	324	56				
S ½ of N. E. ¼	5	“	“	80					
Lot 2	5	“	“	42	30				
E ½ of S. W. ¼	5	“	“	80					
S. E. ¼	5	“	“	160					
S. E. ¼ of S. E.¼	7	“	“	40					
All of	9	48	19	640					
W ½ of N. E. ¼	11	“	“	80					
N. E. ¼ of N. W. ¼	11	“	“	40					
E ½ of N. E. ¼	17	“	“	80					
S. W. ¼ of N: E. ¼	17	“	“	40					
E ½ of S. E. ¼	17	“	“	80					
Lot 1	17	“	“	38	00				
Lot 2	17	“	“	39	00				
West frl. half	19	“	“	373	12				
S. W. ¼ of S. W.¼	3	49	19	40					
N. W. ¼	15	“	“	160					
E ½ of S. W. ¼	15	“	“	80					
N. W. ¼ of N. E. ¼	17	“	“	40					
N. W. ¼	17	“	“	160					
N. W. ¼ of S. W. ¼	17	“	“	40					
N. W. ¼ of N. E. ¼	21	“	“	40					

General Land Office, Swamp Land Division, May 2, 1878.

This certifies that the tracts of land embraced in the foregoing list have been duly selected and reported to this office as swamp office as swamp lands under the provisions of the Act of Congress approved Sept. 28, 1850, as extended to the State of Minnesota by the Act of March 12, 1860; that they have been compared with the field notes and township plats of public survey and with the tract books of this office, and from such examination it appears that each smallest legal subdivision thereof is swamp land within the meaning of the grant of 1850; and that none of said tracts have been reserved, sold or dis[—]

General Land Office, Swamp Land Division, May 2, 1878.

384 This certifies that the tracts of land embraced in the foregoing list have been duly selected and reported to this office as swamp office [as swamp office] as swamp lands under the provisions of the Act of Congress approved Sept. 28, 1850, as extended to the State of Minnesota by the act of March 12, 1860; that they have been compared with the field notes and township plats of public survey and with the tract books of this office, and from such examination it appears that each smallest legal subdivision thereof is swamp land within the meaning of the grant of 1850; and that none of said tracts have been reserved, sold or disposed of, in pursuance of any law enacted by Congress prior to March 12, 1860.

H. W. BABBITT, Exam'g. Clerk.

E. KILLPATRICK, Head of Div.

Department of the Interior,
General Land Office,
May 3, 1878.

Respectfully submitted for approval,
J. A. WILLIAMSON, Commissioner.

Department of the Interior,
7, May, 1878.

The foregoing List of Swamp Selections is hereby approved, subject to any valid legal rights that may exist to any of the tracts therein described.

C. SCHURZ, Secretary.

385 I, J. A. Wiliamson, Commissioner of the General Land Office, certify that the foregoing is a true copy of Approved List No. 4 of Swamp and Overflowed Lands selected as inuring to the State of Minnesota, under the provisions of the

Act of Congress approved Sept. 28, 1850, as extended to said State by Act of March 12, 1860, in the District of Lands subject to sale at Duluth, Minnesota.

United States
General
Land
Office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the General Land Office to be affixed, at the City of Washington, the 25th day of July, 1878.

J. A. WILLIAMSON, Commissioner.

Department of the Interior,
General Land Office.
Washington, D. C., Jany. 21, 1880.

Register and Receiver,
Duluth, Minn.

Gentlemen: I inclose herewith a certified copy of Approved List No. 6 of Swamp and Overflowed lands in your district, selected as inuring to the State of Minnesota, under the Provisions of the Act of Congress approved Sept. 28, 1850, and March 12, 1860. You will enter the tracts therein described in your tract books and township plats, as heretofore directed in similar cases, and report to this office whether or not the same are from Conflict by Sale or otherwise.

Very respectfully,
J. M. ARMSTRONG,
Acting Commissioner.

Compared with Plats & Tract Books & no conflicts found but several omissions made from Surveyor Generals List, Sept. 18, 1880.

M. C. RUSSELL, Register.

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386 No. 6.

A list of swamp and overflowed lands, selected as inuring to the State of Minnesota, under the provisions of the Act of Congress approved September 28, 1850, as extended to said State by Act of March 12, 1860, (Revised Statutes of the U. S. section 2490), in the District of lands subject to sale at Duluth, Minn. viz:

Entered on Tract Books.

Swamp Lands.

Parts of Sections.	Section	Township	Range	Surveyed Area		Unsurveyed Area		Total Area	
				Acres	Hdths	Acres	Hdths	Acres	Hdths
N. W. ¼ of S. W. ¼	25	52	18	40					
S. E. ¼ of S. W. ¼	27	"	"	40					
W ½ of S. E. ¼	27	"	"	80					
All of frl.	31	"	"	611	58				
All of	33	"	"	640					
N. W. ¼ of N. E. ¼	35	"	"	40					
N. W. ¼	35	"	"	160					

General Land Office,
Swamp Land Division,
November 28, 1879.

This certifies that the tracts of land embraced in the foregoing list have been duly selected and reported as swamp lands, under the provisions of the Act of Congress approved Sept. 28, 1850 (Revised Statutes of the U. S. Section 2479) as extended to the State of Minnesota by Act of March 12, 1860, (Revised Statutes of the U. S. Section 2490). That they have been compared with the field notes and plats of U. S. Survey, on file in this office, and that each smallest legal subdivision appears therefrom to be swamp or overflowed land; that they have been compared with the tract books of this office, and that none of said tracts appear therefrom to have been reserved, sold, or disposed of, in pursuance of a law enacted by Congress prior to March 12, 1860.

387 H. W. BABBITT, Exam'g Clerk.

S. L. CRISSEY,
Chief of Division.

Department of the Interior,
General Land Office,
December 1, 1879.

Respectfully submitted for approval
J. M. ARMSTRONG,
Acting Commissioner.

Department of the Interior,
Washington, D. C. Dec. 4th, 1879.

The foregoing list of swamp land selections is hereby approved, subject to any valid legal rights that may exist to any of the tracts therein described.

C. SCHURZ, Secretary.

I, J. M. Armstrong, Acting Commissioner of the General Land Office, certify that the foregoing is a true copy of Approved List No. 6 of Swamp and Overflowed Lands selected as inuring to the State of Minnesota, under the provisions of the Act of Congress approved Sept. 28, 1850, as extended to said State by Act of Mar. 12, 1860, in the District of Lands subject to sale at Duluth, Minnesota.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land office to be affixed at the city of Washington, the 21st day of January, 1880.

United States
General
Land
Office.

J. M. ARMSTRONG,
Acting Commissioner.

Entered on tract Books Mch. 31, 1883.
J. R. CAREY, Reg.

Swamp Lands.

No. 19.

388 A List of Swamp and Overflowed Lands selected as inuring to the State of Minnesota, under the provisions of the Act of Congress approved September 28th, 1850, and March 12th, 1860, in the District of Lands subject to sale at Duluth, Minnesota, viz:

Entered in Tract books. O. K.
March 25, 1885.
J. R. CAREY, Reg.
Reported to Com'r. Apr. 30th, 85. B.

Swamp Lands.

Parts of Sections.					
Lot 4 N. of St. Louis River	25	51	19	20	25
Lot 1	27	"	"	10	60
" 2	27	"	"	32	95
N. W. 1/4 of S. W. /14	33	"	"	40	
S 1/2 " S. W. 1/4	33	"	"	80	
E 1/2	31	52	19	320	
E 1/2 " S. W. 1/4	31	"	"	80	

General Land Office,
Swamp Land Division,
February 16, 1885.

This certifies that the tracts of land described in the foregoing list, embracing an area of Fifty-three thousand eight hundred and twenty-seven acres and nineteen hundredths of an acre (53,827 19/100) have been duly selected and reported as

Swamp lands under the provisions of the act of Congress approved September 28th, 1850, as extended to the State of Minnesota by Act of March 12th, 1860; that they have been compared with the field notes and plats of United States Survey on file in this office and that each smallest legal subdivision thereof appears therefrom to be swamp land; that they have been compared with the tract books of this office and are found to be free from conflict by sale or otherwise.

H. W. BABBITTS, Examiner.

389 D. T. PIERCE, Chief of Division.

Department of the Interior,
General Land Office, February 17, 1885.

The foregoing list of Swamp and Overflowed lands embracing an area of 53,827 19/100 acres is respectfully submitted to the Secretary of the Interior and the approval thereof to the State of Minnesota recommended.

N. C. McFARLAND, Commissioner.

J. R. McC. A. M.

Department of the Interior, February 25, 1885.

The foregoing list of Swamp lands selections is hereby approved subject to any vaild adverse rights that may subsist to any of the tracts therein described and embraces 53,827 $\underline{19}$ acres.

H. M. TELLER, Secretary.

I, L. Harrison, Acting Commisioner of the General Land Office, certify that the foregoing is a true copy of Approved List No. 19 of Swamp and Overflowed Lands selected as inuring to the State of Minnesota, under the provisions of the Act of Congress approved September 28th, 1850, and March 12th, 1860. in the District of Lands subject to sale at Duluth, Minnesota, as the same apears on file in this office.

United States
General
Land
Office.

In Testimony whereof, I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington the 12th day of March, 1885.

L. HARRISON,
Acting Commissioner.

390 EXHIBIT NO. 15:—Offered in evidence at page 209, this record.

(Copy) A. M.
F. A. W. J. A. L.

United States of America, Department of the Interior,
Washington, D. C. March 17, 1891.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of a report and of a letter and its endorsement on file in this Department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

(Seal.) JOHN W. NOBLE,
Secretary of the Interior.

(Copy)

City of Washington, December 10th, 1872.

To the President of the United States:

Sir: In accordance with the instructions of the Department of the Interior, dated October 1st, 1872, the undersigned, appointed a commission to examine and report upon the completed road and telegraph line of the Northern Pacific Railroad Company, from its junction with the Lake Superior and Mississippi Railroad, near Thomson, Minnesota, to the Red River of the North, have the honor to submit the following report:

On arriving at the line of the road for the purpose of entering upon its duty, the commission found itself unable to proceed for the reason that the affidavit of the president of the company required by the instruction of the Interior Department, dated the twenty-third day of September last,
391 had not been prepared, and could not be then furnished on account of the absence of that officer on the Pacific Coast.

It became necessary therefore to postpone all official action in the premises, unless the requirement referred to could be so modified that the affidavit of the general manager of the road might be substituted for that of its president.

Instructions on the subject were asked by telegraph on the sixteenth of October ult., and on the eighteenth, the authority of the Department of the Interior to accept the affidavit of the general manager was received by the commission. The telegram authorizing such acceptance is enclosed herewith, marked "A."

The affidavit of the general manager referred to will be found accompanying, marked "B."

Location of the Road.

The line of the road so far as examined by the commission, is, in its opinion, so located as to combine the purposes of a central and convenient channel for the business of the region of country traversed by it, regard being had to through, as well as local traffic, and to future as well as present needs.

Grades and Curves.

As a rule, the grades upon the line of the road were found to be light, and the curves moderate. The heaviest ascent is at the rate of 53.3 to the mile, and is something less than two-thirds of a mile in length. Three-fourths of the whole length of the line is below an average grade of thirty feet to the mile, and about sixty miles of the distance is of grade level.

The sharpest curve is three degrees in a radius of about two thousand feet. In the opinion of the Commission all the grades and curves fall within the limit prescribed by the government, and are not greater in number or extent than would be sanctioned by sound engineering or economy
392 in construction.

Embankments and Excavations.

The embankments and excavations come within the requirements of the law and instructions furnished as a guide. They were furthermore found to be uniformly in good condition, and subjects of proper care on the part of the company.

Mechanical Structures.

No stone suitable for the purpose having been found on or within a reasonable distance of the line, the culverts and the abutments and piers for bridges on the road are constructed of timber. The number of bridges on the division examined is twenty-six. Eight of these are the "Howe Truss," with span varying from forty to one hundred and forty-three feet in length, with pile approaches, except that over the Mississippi river at Brainerd. This is approached by well constructed trestle work. The remainder are pile bridges, varying in length. Many of these it is intended shall be permanently filled in with earth, and work to that end was found to be in progress at several points.

The total number of culverts is two hundred and two, of which ninety-seven are box and one hundred and five open. They were found to be in good condition, generally, and are believed to be sufficient both in size and number to answer the purpose for which they were constructed.

Sidings.

The number of sidings is twenty-two, and their aggregate length is forty-four thousand eight hundred and seventy-five feet. They are judiciously distributed along the line of the road, and are deemed ample, both in location and capacity, for its present requirements.

Ballasting.

The road was found to be well and sustantially ballasted with gravel. The ties are firmly imbedded, and the
393 track is smooth and in good condition. In illustration of this point it may be proper to say that regular passenger and freight trains have been running at fully average rates of speed over the entire length of the division since the first day of last May.

Cross Ties.

The ties are laid twenty-six hundred and forty to the mile, and are of the timber found on the line of the road. About ten per cent are of oak; forty-five per cent of tamarack, and forty-five per cent of Norway Pine. As the fish-joint has been adopted by the company, and as experience has shown that this joint is best broken between ties, no difference in the choice of timber for these points has been deemed necessary. The ties are hewn, and in points of dimension, and bearing surface fully conform to the prescribed standard.

Rails.

The rails are of American manufacture, and weigh fifty-six pounds to the yard. In quality and manner of laying, they meet, in the judgment of the commission, all the requirements of the government on the subject.

Rolling Stock.

The rolling stock of the company is constituted as follows:

Locomotive engines, Sixty-eight.
Passenger cars, eighteen.
Baggage cars, five.
Pay cars, one.
Observation cars, two.
Box cars, three hundred and fifty.
Platform cars, eleven hundred.
Cabose cars, six.
Wrecking cars, one.
Hand cars, fifty-two.
Rubber cars, thirty-six.
Pile driver, one.

This stock is believed to be ample for the present and near future requirements of the road, and the commission
394 takes pleasure in bearing testimony to its uniformly excellent quality and good condition. In addition to the list given above, twenty-eight locomotive engines and four passenger cars are now in process of construction, under contract to be delivered at an early day.

Engine Houses and Repair Shops.

At Brainerd the company has erected extensive and well equipped engine houses and repair shops, furnished with steam power and all the machinery necessary for probable contingencies, with a large stock of iron and other supplies on hand. In addition to these, engine houses and repair shops were found at Duluth, and also at Fargo, on the west bank of the Red River of the North. Although not located technically upon the division under inspection, it will of course have all the advantages and benefits arising from facilities of that character so directly accessible. Up to the time of inspection, the buildings used for this purpose were constructed of wood, but at Duluth and Fargo, extensive engine houses were being built of brick, with the work upon them so far advanced as to justify the expectation of the company that they would be fully completed before the commencement of the winter months.

Passenger, Freight and Water Stations.

There are fifteen passenger and nine freight stations on the division examined. These buildings are constructed of wood, and vary in size from sixteen by twenty-four feet, to thirty by fifty feet, the majority being twenty by forty feet. They are located judiciously, with due regard for the passenger and freight business of the road, and are deemed adequate to its wants. They are substantially built, tasteful in appearance, supplied with all conveniences, usually found in such establishments, and in every respect will compare favorably with those upon the majority of roads in the country. In addition to the ordinary station houses, the company has con-
395 structed at Brainerd and also at Glyndon, the crossing of the Saint Paul and Pacific Railroad, a spacious and comfortable house intended for the accommodation of emigrants and others seeking homes near the line of the road. These houses will accommodate about three hundred persons each, and are provided with plain and substantial furniture and necessary cooking utensils for the use of the occupants. It is intended that they shall be occupied free of charge by all persons in search of homes either upon the government or

company lands lying within the limits of the land grant of the road. *A similar building is also located at Duluth.* The water stations are twenty in number, with an aggregate tankage capacity of two hundred thousand gallons, exclusive of one at Pillager station, supplied from a running stream by steam syphon, the capacity of which is practically unlimited. They are of an approved plan, and are substantially constructed and provided with such protection against freezing as is believed to be adequate.

Snow Fences.

To guard against obstructions from snow, the company has already built snow fences along the sides of such deep excavations as are not protected from the force of winds by growing timber. The minor excavations are protected by a single line of fence on either side; the deeper cuts by a double line on either side. These fences are located about one hundred feet from the track, with a space of one hundred feet between the two lines. On the inner fence the boards are placed perpendicularly, and on the outer, horizontally. They are eight feet high, constructed of boards six inches wide, with intervening spaces of four inches. The posts are set two and a half feet in the ground, and will average, five inches across the top. The double line of fence aggregates fifty-one thousand six hundred feet, and the single line, sixty-six thousand seven hundred feet in length. The managers of the company express the confident opinion that these fences will afford adequate 396 protection against more than the ordinary snow fall of that region.

In addition to these precautions, the company has now on hand and ready for use four substantial snow plows of approved model, and six others in process of construction, to be ready for service the present winter.

Telegraph Line.

The telegraph line of the company is well constructed and equipped, and its facilities are ample for the use of the road and the probable wants of the public.

Conclusion.

Having found that portion of the road lying between Thomson Junction and the Red River of the North, two hundred and twenty-eight and 4118/5280 miles in length, to be judiciously located, well constructed and adequately equipped, and believing that it substantially meets the requirements of both the letter and spirit of the law and Department regulations bearing on the subject, the Commission respectfully recommends its acceptance by the Government.

We have the honor to be with great respect,
Your obedient servants,
S. H. KAUFFMANN,
A. L. SANDS,
THOS. UNDERWOOD,
Commissioners.

Washington, Dist. of Col.—ss.
Sworn and subscribed before me this tenth day of December, A. D. 1872.
? SAM'L G. YOUNG,
Notary Public.

County of Crow Wing,
State of Minnesota—ss.

Charles W. Mead, general manager of the eastern department of the Northern Pacific Railroad, being duly sworn, upon his oath says: That the said Northern Pacific Railroad
397 is now completed from its junction with the Lake Superior and Mississippi Railroad, in the county of Carlton and State of Minnesota to Moorhead, in the County of Clay, in said state, a distance of two hundred and twenty-eight (228) miles and four thousand, one hundred and eighteen (4118) feet; that said road is finished according to the requirements of law and the instructions of the Department of the Interior, and is now ready for governmental inspection.

C. W. MEAD,
Gen'l Manager, D'p't East N. P. R. R.

Sworn to and subscribed before me this eighteenth day of October, A. D. 1872, at Brainerd in the County of Crow Wing and State of Minnesota. Witness my hand and notarial seal.

[Seal] B. S. RUSSELL,
Notary Public, Saint Louis County, Minn.

Department of the Interior,
Washington, D. C., 6th Jan., 1873.

Sir: I have the honor to transmit herewith, for your action, the report of Messrs. Kauffmann, Sands and Underwood, commissioners appointed by your order to examine and report upon the Northern Pacific Railroad.

Under date of 10th ult. these gentlemen reported on the completed portion of said road, commencing at its junction with Lake Superior and Mississippi Railroad, near Thomson, Minnesota, and extending to the Red River of the North, a distance of 228 miles.

The commissioners in their report represent that this portion of road has been constructed in a first-class manner. I therefore recommend the acceptance of the same, and the issue of patents for lands due on account of the completion thereof.

Very respectfully,
Your obedient servant,
B. R. COWEN, Acting Sec'y.
To the President.

398 EXHIBIT NO. 16.—Duly Certified. Offered in evidence at page 209 this record:

St. Paul, Minnesota, Sept. 7th, 1882.
The Honorable Henry M. Teller,
Secretary of the Interior.

Sir: We the undersigned Commissioners of the United States, appointed to examine one hundred and seventy five miles of the completed line of the Railroad of the Northern Pacific Railroad Company, commencing at a point on said Company's Railroad on the south bank of the Yellowstone River about one and one-half miles west of O'Fallon's Creek, Montana Territory, and ending at a point about one and one-half miles west of Arrow Creek, Montana; also twenty-five miles beginning at the last-named point and ending at a point on the west bank of Canon Creek seven miles west of the town of Billings in Section 22, Township 1 South, Range 25 East of the Montana Meridian; also twenty-five miles beginning at Northern Pacific Junction, near Thomson, Minnesota, and ending at or near Bluff Creek in Superior, Wisconsin. * * *

We, the undersigned Commissioners, further report and certify that we have carefully examined twenty-five miles of the completed line of the Railroad of the Northern Pacific Railroad Company, beginning at Northern Pacific Junction, near Thomson, Minnesota, and ending at or near Bluff Creek in Superior, Wisconsin; that the alignment and grades thereof are correctly represented on the maps and profiles accompanying this report, and are such as should be adopted in the construction of a first class Railroad, as contemplated by the Act of Congress pursuant to which our examination is made.

The maximum grade is fifty-two and eight-tenths feet to the mile.

A summary of the grades and alignment is attached to the profile accompanying this report.

399 Nineteen and nine hundred and ninety-six thousandths miles are tangents and the remainder curves, of which the sharpest are seven hundred and sixteen and eight-tenths feet radius. There is but one curve of this radius which

is in the town of Superior, eleven hundred and twenty-four feet in length.

The rails laid are of steel, American manufacture, and weigh fifty-six pounds per lineal yard.

The gauge of the Road is four feet eight and one-half inches.

Joints are made with fish-plates, two plates and four bolts to each joint, and the track is spiked full.

There are twenty-six hundred and forty ties to the mile.

The cross-ties are six inches thick, are hewn, six inches face, eight feet long, and all of pine.

There are five thousand six hundred and thirty-eight feet of sidings, connected at both ends with the main track by substantial switches, and there are twenty-three thousand eight hundred and ninety-two feet of spur track.

The excavations are of such slopes and widths as to give twenty feet clear at grade; except in rock excavations which are not less than sixteen feet wide at grade.

The Road is ballasted with gravel, and is well lined and surfaced throughout.

The telegraph line is in operation and is built of white cedar poles, which run thirty to the mile. The wire is new number nine galvanized iron, set on glass insulators, supported by cross-arms fitted to receive two wires.

There are thirty-nine bridges, including a draw bridge at Superior two hundred and twenty-eight feet long.

There are fifty culverts, all substantially constructed for permanent use.

The aggregate length of bridges is seven thousand six
400 hundred and sixty-three feet. The piles used therein
are of pine. The caps, stringers, and floors are of white
and Norway pine.

There are on the twenty-five miles of Railroad the following buildings, viz.:

At Walbridge: Section House twenty-four by forty-eight feet, L fourteen by sixteen feet.

At Superior: Combined Freight and Passenger Depot twenty-four by seventy feet. Water Tank sixteen by twenty-four feet. Pump House sixteen by thirty feet. Sand House, sixteen by forty feet. Combined Store and Ice House sixteen by forty-six feet. Tool House twelve by sixteen feet. Engine House (two stalls) thirty by sixty-four feet.

The said section of twenty-five miles of Railroad is constructed in every respect in first class manner and we recommend that it be accepted by the Government.

HARVEY W. SCOTT,
JOHN P. SANBORN,
ARTHUR B. JOHNSON,
Commissioners.

Subscribed and sworn to before me this 7th day of September, 1882.

[Seal.] CHAS. S. FEE,
Notary Public.
St. Paul, Ramsey County, Minnesota.

Indorsement: 2731. Department of the Interior. L. & R. R. Div. Received Sept. 12, 1882. 2796. Department M of the Interior. L. & R. R. Div. Received Sept. 18, 1882.

Department of the Interior. Z. B. S.
Washington 14th, Sept., 1882.

Sir: I have the honor to transmit herewith the report of Messrs. Harvey W. Scott, John P. Sanborn and Arthur B. Johnson, whom you appointed Commissioners to examine two hundred and twenty-five miles of the Northern Pacific Railroad. They report said sections (two hundred miles in the Territory of Montana, beginning at a point on the south bank of the Yellowstone River, about one and a half miles west of O'Fallon's Creek, and ending at a point on the west bank
401 of Canon Creek, seven miles west of the town of Billings, in Sec. 22 T. 1, S. R. 25 E, Montana Meridian; and twenty five miles, beginning at the Northern Pacific Junction, near Thomson, Minnesota, and ending at or near Bluff Creek, in Superior, Wisconsin, as constructed in substantial compliance with the requirements of law and the instructions of this Department; and the same of the telegraph line, along said sections of the railroad.

I therefore recommend that you accept said two hundred and twenty-five miles of railroad, and that patents for lands earned by its construction be issued to the Northern Pacific Railroad Company, on their compliance with the law in such cases made and provided, and with the decision of this Department of the 5th of June last.

Very respectfully,
H. M. TELLER,
Secretary.

The President.
2731-M-1882.

Indorsement: 6th Sec. 200 miles also Sec. 25 miles. In Wis. & Minn. 250 to 450.

Department of the Interior.
14 Sept., 1882.

H. M. Teller, Secretary, Submits to the President report of Commissioners on two hundred and twenty-five miles of Northern Pacific Railroad.

Executive Mansion,
Sept. 16, 1882.

The within recommendations are approved.

CHESTER A. ARTHUR.

2796 M. Department of the Interior. L. & R. R. Div. Received Sept. 18, 1882. Copy, with maps and profiles, to G. L. O. Sept. 18, 1882.

402 EXHIBIT No. 17.—Duly certified. Offered in evidence at page 209 this record:

St. Paul, Minnesota, January 18, 1884.

To the Honorable,
The Secretary of the Interior,

Sir: We the undersigned Commissioners of the United States, appointed to examine twenty-five (25) miles of the completed line of Railroad of the Northern Pacific Railroad Company, commencing at a point on west bank of Bluff Creek in the town of Superior, in the Northeast quarter of Section Thirty-two (32) in Township Forty-nine (49) north Range Thirteen (13) west, and thence extending in an easterly direction, and terminating at a point about three fourths of a mile east of Brule River, in the southwest quarter of Section Thirteen (13) in Township Forty-seven (47) North Range Ten (10) west of the Fourth Principal Meridian, all being in the State of Wisconsin, do hereby report and certify that we have carefully examined the said section of said Railroad, that the alignment of and grades are such as should be adopted in the construction of a first class Railroad as contemplated by the Act of Congress, under which our examination is made. The maximum grade is fifty-two and eight-tenths 52 8/10 feet per mile. A summary of the grades and alignment is attached to the profile accompanying the report. Of the twenty-five (25) miles, twenty and ninety-three hundredths (20 93/100) miles are tangent, and the remainder curved. The sharpest curves are fourteen hundred and thirty-two (1432) feet radius, but of curves of this radius there are seventy-seven hundredths of a mile only. The rails laid are all of steel of American manufacture of fifty-six (56) pounds weight per lineal yard, and we are informed and believe them to be of American ore. The gauge of the Road is four feet eight and a half inches.
403 The joints are made with fish-plates, two plates and four bolts to each joint, and the track is spiked full. At all places where we made personal count and inspection, there are twenty-six hundred and forty ties per mile. The ties are six (6) inches thick, mostly hewed, generally of six (6) inches,

or more width of face, and eight (8) feet long. They are of pine, tamarac, hemlock and oak.

There are in the said twenty-five (25) miles of Railroad, four thousand two hundred and ninety (4290) feet of sidings, connected with main track by good substantial switches. The excavations are of such slope and width as to give twenty (20) feet clear at grade, except in Rock excavations, which are not less than eighteen (18) feet wide at grade. Embankments are made fourteen feet wide at grade. The Road is, for the most part, ballasted, or filled in with material of which the road-bed is composed. The track is well lined and fairly surfaced and is in fair condition for the transaction of business.

There are on the said section of twenty-five (25) miles of Railroad, sixty (60) pile and trestle bridges having an aggregate length of one (1) mile and two thousand three hundred and sixty-seven (2367) feet. Included in the said number of bridges are four (4) single spans of Combination Pratt Truss, as follows, viz: One through span of one hundred and twenty-seven (127) feet; one deck span of one hundred and thirty-eight (138) feet; and two (2) single deck spans of seventy-eight (78) feet each making a total length of four hundred and twenty-one (421) feet of Truss bridges. All of these bridges are of good material and workmanship. The piles, caps, stringers and floors of the bridges are of pine, and the bridges all have guard rails of pine bolted and spiked to the ties. There are also eleven (11) Box culverts and three (3) open culverts. On the said twenty-five (25) miles of Railroad, are the following
buildings, viz: Three (3) Section Houses, each fourteen
404 feet by twenty-four feet (14x24). Two Boarding Houses,
each sixteen feet by twenty-four feet (16x24). One (1)
Tank House and Tank. The former, fourteen and a half feet by fourteen and a half feet, (14 1/2x14 1/2); and the latter eight feet by twelve feet (8x12) diameter. One (1) Pump House and Pump, twelve feet by sixteen feet (12x16). One (1) Tool House, twelve feet by fourteen feet (12x14). The Telegraph Line is in operation. It is built with white cedar poles, which run thirty (30) to the mile. The wire is new number nine (9) galvanized iron, set on glass insulators, supported by cross arms fitted to receive four (4) wires. We have received from the officers of the Northern Pacific Railroad Company, the statement of Rolling Stock now on the completed part of the Road, to which belongs the section now examined, and for which its requisite proportion is assigned as business requires: Locomotives 387, Passengers cars First class 62, Passengers cars, second class 51, Passenger cars, third class 14, Chair cars 2, Sleeping cars 19, Dining cars 11, Baggage cars 34, Express cars 19, Baggage and Express cars 2, Mail and Express cars 31 Mail and Smoking cars 1, Caboose cars 155, Box cars 4700,

Stock cars 812, Refrigerator cars 18, Platform cars 2731, Gondola Coal cars 459, Four wheel coal cars 225, Observation cars (Superintendents) 5, Engineers cars 1, Pay cars 2, Painters' cars 1, Road cars 4, Boarding cars 73, Wrecking cars 5, Tool cars 5, Pile Drivers 6, Steam Shovels 4, Steam stone Derricks 2, Hand cars 440, Rubble cars 253, Iron cars 8.

In conclusion, we report that the whole section of twenty-five (25) miles of Railroad is completed in a satisfactory manner, and we recommend that it be accepted by the Government.

HEZEKIAH WATKINS,
FRANK H. TRUSDELL,
JOHN C. WYMAN,
Commissioners.

State of Minnesota,
Hennepin Co.—ss.

405 Personally appeared before me this 18th day of January A. D. 1884 the within mentioned H. Watkins, Frank H. Truesdell and John C. Wyman to me personally known to be the individuals described in the foregoing certificate, and being by me personally examined did, each for himself, acknowledge that he executed the same of his own free will and assent.

In witness whereof, I have hereunto set my hand and affixed my official seal, this eighteenth day of January A. D. 1884.

[Seal.]

M. L. KNOWLTON,
Notary Public,
Hennepin Co., Minn.

Department of the Interior.
Washington 30 Jany., 1884.

Sir: I have the honor to submit herewith the report of Messrs. Hezekiah Watkins, Frank H. Trusdell and John C. Wyman, whom you appointed Commissioners to examine twenty-five miles of the Northern Pacific Railroad and Telegraph Line in Wisconsin. Said section begins in the town of Superior, Wisconsin, at a point in the N. E. 1/4 of Sec. 32 T. 49, N. R. 13 west, runs eastwardly and ends at a point about three-fourths of a mile east of Brule River in the S. W. 1/4 of Sec. 13, T. 47, N. R. 10 W. of 4th Principal Meridian, Wisconsin.

The Commissioners report said section as constructed in substantial compliance with law and the instructions of this Department. I therefore recommend that you accept said section, and that patents for lands earned by its construction be issued to the Northern Pacific Railroad Company, on their compliance with the laws and regulations in such cases provided.

Very respectfully,
H. M. TELLER,
Secretary.

The President.
472-1884.

Indorsement: Department of the Interior, 30 Jan'y, 1884.
H. M. Teller, Secretary, Submits to the President re-
406 port of Commissioners on 25 miles of Northern Pacific
Railroad, east of Superior, Wisconsin.

Execution Mansion, Jan'y. 31, 1884.
The within recommendations are approved.

CHESTER A. ARTHUR.

Copy with map and profile to G. L. O. Feb. 2/84 also copy to Pres. of Co. same day.

EXHIBIT No. 18.—Duly certified. Offered in evidence at page 209 this record.

Superior, Wisconsin, Jan. 31st, 1885.

To the Honorable
The Secretary of the Interior,

Sir: We the undersigned Commissioners of the United States, appointed to examine thirty-seven and one-half (37 1/2) miles of the completed line of railroad of the Northern Pacific Railroad Company, commencing at the point of beginning of said railroad, near the town of Ashland on Lake Superior, as definitely fixed by the Board of Directors of said Northern Pacific Railroad Company, by resolution adopted August 28, 1884, in Section 27, Township 48 North, Range 4 West of the Fourth Principal Meridian, and thence extending westwardly and terminating at a point the eastern terminus of the constructed section of twenty-five (25) miles of Wisconsin Division of the Northern Pacific Railroad, accepted by the President of the United States, January 31, 1884, in the southwest quarter of Section 13, Township 47 north, Range 10 west of the same meridian, about three-fourths of a mile east of Brule River, all being in the State of Wisconsin, do hereby report and certify that we have carefully examined the said section of said
railroad that the alignment of and grades are such as
407 should be adopted in the construction of a first class
railroad, as contemplated by the Act of Congress under which our examination is made. The maximum grade is one hundred and eleven and four-tenths (111.4) feet per mile, but of grade of this character there is seventeen hundredths (17/100 of a mile only, being between two railroad crossings

in town of Ashland. A summary of the grades and alignment is attached to the profile accompanying this report. Of the thirty-seven and one-half (37 1/2 miles, twenty-nine and seventy-two hundredths (29.72) miles are tangent and the remainder curved. The sharpest curves are five hundred and seventy-three (573) feet radius; but of curves of this radius there are eighteen hundredths (18/100) of a mile only.

The rails are all of steel, of American manufacture of fifty-six (56) pounds weight per lineal yard, and we are informed and believe them to be of American ore. The gauge of the Road is four feet eight and a half (4′ 8 1/2) inches. The joints are made with fish-plates, two plates and four bolts to each joint and the track is spiked full.

At all places where we made personal count and inspection there are twenty-six hundred and forty (2640) ties per mile. The ties are six (6) inches thick, mostly hewed generally six (6) inches or more width of face, and eight (8) feet long. They are of pine, tamarac, hemlock and oak. There are in the said Thirty-seven and one-half (37 1/2) miles of railroad. Ten thousand three hundred (10,300) feet of sidings connected with main track by good substantial switches. The excavations are of such slope and width as to give twenty (20) feet clear at grade, except in rock excavations which are not less than eighteen (18) feet wide at grade. Embankments are made fourteen (14) feet wide at grade. The road is for the most part ballasted or filled in with material of which the roadbed is composed. The track is well lined and [and] fairly surfaced, and is in fair
408 condition for the transaction of business.

There are on the said section of Thirty-seven and one-half (37 1/2) miles of railroad fifty-three (53) pile and trestle bridges, having an aggregate length of two (2) miles and five hundred (500) feet. Included in said number of bridges is one (1) Deck Span of Combination Pratt Truss of seventy-five (75) feet. All of these bridges are of good material and workmanship. The piles, caps, stringers and floors of the bridges are of pine, and the bridges all have guard rails of pine, bolted and spiked to the ties. There are also twenty-three (23) box culverts and two (2) open culverts. On the said Thirty-seven and one-half (37 1/2) miles of railroad are the following buildings, viz: At Ashland, Combination Station house, 24 by 118 feet and water tank 16 by 24 ft. under construction; turn table 54 ft. diameter; Engine house six stalls; 66 ft. deep; Sand house 18 by 24 ft., both the latter under construction. At Fish Creek three miles west of Ashland, water station 16 by 24 feet, Pump house 16 by 20 ft. Also under construction at same point section house 34 by 20 ft. and tool house 12 by 16 feet. At Moquah, 10 1/2 miles west of Ashland, under con struction, tool house 10 by 16 ft. At Ino, 16 miles west of Ashland, one water tank 16 by 24 feet, and pump house, 20 by 30 feet. At Topside, 23 3/4 miles west of Ashland, under construction section house 34 by 20 feet, and tool house 12 by 16 feet. At Muskeg, 32 1/2 miles west of Ashland, water tank 16 by 24 ft. and pump house, 20 by 30 feet.

The Telegraph Line is in operation. It is built with White Cedar poles, which run thirty (30) to the mile. The wire is of new number nine (9) galvanized iron, set on glass insulators supported by cross arms fitted to receive four (4) wires. We have received from the officers of the Northern Pacific Railroad Company, the statement of Rolling Stock now on 409 the completed part of the road to which belongs the section now examined, and for which its requisite proportion is assigned as business requires: Locomotives 391, Passenger cars, first class 52, Passenger cars, second class 48, Passenger cars, third class, 13, Emigrant sleepers 35, Chair cars 2, Sleeping cars 22, Dining cars 14, Baggage cars 34, Express cars 19, Business cars 7, Mail and Express cars 31, Passenger and Baggage cars 3, Caboose cars 174, Box cars 4875, Stock cars 801, Refrigerator cars 24, Gondola coal cars 455, Four wheel coal cars 238, Observation cars (Supts.) 6, Platform cars 2717, Painters' car 1, Boarding cars 73, Wrecking cars 7, Tool cars 7, Pile Drivers 9, Steam Shovels 6, Steam stone Derricks 2, Hand cars 440, Rubble cars 255, Iron cars 8. In conclusion we report that the whole section of Thirty-seven and one-half (37 1/2) miles is completed in a satisfactory manner and we recommend that it be accepted by the Government.

C. G. BARBER,
NATHAN G. KING,
GEO. B. WELCH,
Commissioners.

State of Wisconsin
County of Douglas.—ss.

Personally appeared before me this 31st day of January, 1885, the within mentioned C. G. Barber, Nathan G. King & Geo. B. Welch, to me personally known to be the individuals described in the foregoing certificate and being by me personally examined did each for himself acknowledge that he executed the same of his own free will and accord.

In witness whereof, I have hereunto set my hand and affixed my official seal this 31st day of January A. D. 1885.

[Seal.]

I. W. BURHANS,
Notary Public,
Douglas Co., Wis.

410 Department of the Interior.

Washington 6th Feb., 1885.

Sir: I have the honor to submit herewith the report of Messrs. C. G. Barber, Nathan G. King and George B. Welch, whom you appointed Commissioners to examine a section of thirty-seven and one-half miles of the Northern Pacific Railroad and Telegraph line in Wisconsin.

Said section begins near the town of Ashland, in Sec. 27, T. 48 N. R. 4 W., 4th Principal Meridian, runs westwardly and ends at a point in the S. W. 1/4 of section 13 T. 47 N. R. 10 W., same meridian, Wisconsin. The commissioners report said section as constructed in substantial compliance with law and the instructions of this department. I therefore recommend that you accept said section, but that no patents for lands lying co-terminus with said section shall issue until specific orders so to do be given by you.

Very respectfully,
H. M. TELLER,
Secretary.

The President

411 COMPLAINANTS' EXHIBIT No. 19.—Being N. P. Selection List No. 10, dated Oct. 18, 1883. Offered in evidence at page 211, this record.

List No. 10.

Land Department
Northern Pacific Railroad Co.

Minnesota District.
Records.

Township North.

Range West Meridian.

Triplicate.

Entered on plats and Tract Books, Oct. 18/83.
J. R. CAREY, Register.
Miller.

Triplicate.

Entered on Plats and Tract Books, Oct. 1883.
J. R. CAREY,
Register.

Land Department.
Northern Pacific Railroad Company.

List No. 10.

State of Minnesota.

U. S. Land Office at Duluth.
October 17th, 1883.

The Northern Pacific Railroad Company, under and by virtue of the acts of Congress, entitled "An act granting land to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the northern route," approved July 2nd, 1864, and "A resolution authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road, and to secure the same by mortgage, and for other purposes," approved May 31st, 1870, and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said company, as enuring to it and to which it is entitled under and by virtue of the grants and provisions of the said Act of Congress and the location of the line of route of the railroad of the said Company; being for a section of.......................................miles of the same, coommencing at ....and ending ....

The selections being particularly described as follows, to wit:

DESCRIPTION OF TRACT	Sec.	Town.	Range	AREA		Remarks
				Acres	100ths	
Lots 2 & 3	29	52	11	95	15	
Sw ¼ sw¼	7	53	11	41	56	
Sw ¼ sw ¼	9	"	"	40		
E ½ & se ¼ nw ¼	17	"	"	360		
Nw ¼ ne ¼ & ne ¼ nw ¼	19	"	"	80		
Sw ¼ nw ¼	21	"	"	40		
Nw ¼ nw ¼	31	"	"	39	27	
N ½ & s ½ sw ¼ & se ¼	3	52	12	568	80	
Ne ¼ ne ¼ & s ½ ne ¼, sw ¼ nw ¼ & n ½ se ¼	5	"	"	243	17	
Sw ¼ ne ¼, e ½ nw ¼ & e ½ sw ¼	7	"	"	360	72	
Sw ¼ sw ¼, w ½ se ¼ & se ¼ se ¼	7	"	"			
E ½ & s ½ sw ¼	9	"	"	400		
W ½ & se ¼	15	"	"	480		
N ½, w ½ se ¼ & ne ¼ se ¼	17	"	"	440		
W ½ nw ¼, ne ¼ sw ¼ & w ½ se ¼	1	53	12	199	71	
Nw ¼ ne ¼, n ½ nw ¼ & se ¼ nw ¼	3	"	"	159	04	
Se ¼ sw ¼ & se ¼	3	"	"	200		

413 List No. 10 of selections of Public Lands in the....... Land District ....claimed by the Northern Pacific Railroad Company, as enuring to it under the Act of Congress approved July 2, 1864, and the Several Acts amendatory thereof.

DESCRIPTION OF TRACT	Sec.	Town.	Range	AREA		Remarks
				Acres	100ths	
S ½ ne ¼, nw ¼ & se ¼	5	53	12	398	31	
S ½ ne ¼, n ½ sw ¼ & se ¼ sw ¼	7	“	“	202	18	
W ½ se ¼ & ne ¼ se ¼	7	“	“	120		
E ½ ne ¼, w ½ nw ¼, nw ¼ sw ¼	11	“	“	240		
Nw ¼ se ¼	11	“	“			
Forward..................				4707	91	
E ½ ne ¼, sw ¼ ne ¼ & se ¼	13	53	12	280		
Se ¼ sw ¼ & se ¼	17	“	“	200		
Nw ¼ ne ¼	21	“	“	40		
E ½ ne ¼, nw ¼ ne ¼ & se ¼ sw ¼	23	“	“	160		
Se ¼ sw ¼, s ½ se ¼ & ne ¼ se ¼	25	“	“	160		
Nw ¼ nw ¼ & se ¼ sw ¼	27	“	“	80		
Ne ¼ sw ¼	29	“	“	40		
Sw ¼ ne ¼, se ¼ nw ¼, sw ¼, w ½ se ¼ & se ¼ se ¼	31	“	“	363	99	
W ½ ne ¼, e ½ nw ¼ & w ½ sw ¼	33	“	“	440		
Se ¼ sw ¼ & se ¼	33	“	“			
Se ¼ ne ¼ & se ¼	35	“	“	200		
N ½ nw ¼	31	54	12	83	65	
N ½ sw ¼ se ¼ sw ¼ & se ¼	33	“	“	280		
Ne ¼ ne ¼ & nw ¼ nw ¼	1	52	13	92	48	
Ne ¼ nw ¼ & w ½ sw ¼	3	“	“	124	62	
Nw ¼ nw ¼	5	“	“	42	83	
Ne ¼, e ½ nw ¼, sw ¼ nw ¼ & n ½ sw ¼	7	“	“	473	12	
N ½ se ¼ & se ¼ se ¼	7	“	“			
E ½ of e ½ sw ¼ ne ¼ nw ¼ se ¼	9	“	“	240		
Ne ¼ sw ¼ & s ½ of s ½	11	“	“	200		
Ne ¼ ne ¼ se ¼ & s ½ se ¼	13	“	“	280		
Ne ¼ & s ½ nw ¼	15	“	“	240		
N ½ ne ¼, se ¼ ne ¼ & se ¼ nw ¼	1	53	13	156	72	
W ½ nw ¼, ne ¼ sw ¼ & nw ¼ se ¼	1	“	“	158	06	
Lot 4	3	“	“	33	10	
Ne ¼ sw ¼	5	“	“	40		
Lots 2, 4, 5, 6 & 7 & s ½ nw ¼	7	“	“	351	44	
Ne ¼ sw ¼ & se ¼ se ¼	7	“	“			
Lot 2	9	“	“	33	84	

414 List No. 10 of selections of Public Lands in the...... Land District ....claimed by the Northern Pacific Railroad Company, as enuring to it under the Act of Congress approved July 2, 1864, and the Several Acts amendatory thereof.

DESCRIPTION OF TRACT	Sec.	Town.	Range	AREA		Remarks
				Acres	100ths	
S ½ ne ¼ e ½ sw ¼ & nw ¼ se ¼	11	"	"	200		
Se ¼ se ¼	13	"	"	40		
Forward..................				9741	76	
Sw ¼ ne ¼ nw¼ se ¼ & se ¼ se ¼	25	53	13	120		
Lot 7	25	54	13	27		
Sw ¼ nw ¼ & w ½ sw ¼	27	"	"	120		
Se ¼ ne ¼, se ¼ sw ¼, sw ¼ se ¼ & Lot 7	29	"	"	121	75	
Fr'l s ½ ne ¼	31	"	"	78	50	
N ½ ne ¼, se ¼ ne ¼, se ¼ sw ¼ & sw ¼ se ¼	35	"	"	200		
Ne ¼ nw ¼	1	52	14	42	04	
Nw ¼ ne ¼ & Lot 1	3	"	"	83	21	
E ½ ne ¼ n ½ sw ¼ & sw ¼ sw ¼	5	"	"	201	55	
N ½ ne ¼ & e ½ se ¼	7	"	"	160		
Lot 1 nw ¼ nw ¼ & nw ¼ sw ¼	9	"	"	127	12	
Nw ¼ ne ¼ & ne ¼ nw ¼	13	"	"	80		
Se ¼ ne ¼ & w ½ ne ¼	15	"	"	120		
Nw ¼	17	"	"	160		
Lot 5	17	"	"	1	34	
N ½ & sw ¼	3	53	14	449	86	
N ½, n ½ sw ¼, se ¼ sw ¼ & se ¼	5	"	"	563	20	
W ½ ne ¼, se ¼ ne ¼ & w ½ nw ¼	7	"	"	205	97	
N ½ of n ½, sw ¼, w ½ se ¼ & ne ¼ se ¼	9	"	"	440		
E ½ nw ¼ & sw ¼ nw ¼	15	"	"	120		
N ½ ne ¼	17	"	"	80		
Sw ¼ ne ¼	19	"	"	40		
Nw ¼ sw ¼	21	"	"	40		
Nw ¼ ne ¼, e ½ nw ¼ & n ½ sw ¼	29	"	"	200		
Ne ¼	31	"	"	160		
Lots 5, 6, & 7	33	"	"	76	32	
Island No. 1	33	"	"	1	78	
S ½ of n ½	25	54	14	160		
Sw ¼ sw ¼	27	"	"	40		
Nw ¼ ne ¼, w ½ se ¼ & se ¼ se ¼	31	"	"	160		
W ½ se ¼ & se ¼ se ¼	33	"	"	120		

415 List No. 10 of selections of Public Lands in the....... Land District ....claimed by the Northern Pacific Railroad Company, as enuring to it under the Act of Congress approved July 2, 1864, and the Several Acts amendatory thereof.

DESCRIPTION OF TRACT	Sec.	Town.	Range	AREA		Remarks
				Acres	100ths	
W ½ & n ½ se ¼ & se ¼ se ¼	35	54	14	440		
Lots 1, 3, 8, & 9	1	52	15	109	33	
Sw ¼ nw ¼ & se ¼ se ¼	3	"	"	80		
Sw ¼ nw ¼, nw ¼ ne ¼, e ½ nw ¼ & nw ¼ se ¼	7	"	"	197	09	
Sw ¼ ne ¼	9	"	"	40		
Lots 6 & 7	11	"	"	56	51	
W ½ ne ¼ & se ¼	13	"	"	240		
Se ¼ ne ¼, w ½ ne ¼, & e ½ nw ¼	17	"	"	200		
Lots 1, 2, 3, 4 & 7	17	"	"	180	87	
Lots 2, 3, 6, 7 & 8	19	"	"	176	48	
Se ¼ ne ¼, se ¼ nw ¼ & sw ¼ sw ¼	23	"	"	120		
Forward..................				16081	68	
Se ¼ nw ¼ & w ½ nw ¼	27	52	15	120		
Lot 2 & e ½ nw ¼	29	"	"	120	36	
Lot 2, n ½ ne ¼, nw ¼ & sw ¼ sw ¼	31	"	"	309	03	
N ½ ne ¼, sw ¼ ne ¼, e ½ nw ¼ & n ½ sw ¼	1	53	15	250	03	
S ½ ne ¼ & n ½ se ¼	3	"	"	160		
Se ¼ ne ¼	5	"	"	40		
Se ¼ ne ¼ ne ¼ nw ¼ & se ¼ sw ¼	11	"	"	} 200		
N ½ se ¼	11	"	"			
Se ¼ ne ¼, w ½ ne ¼, w ½ & se ¼	7	"	"	596	88	
Lot 1	13	"	"	29	51	
S ½ sw ¼, sw ¼ se ¼ & n ½ se ¼	17	"	"	200		
Ne ¼ ne ¼, sw ¼ ne¼ & nw ¼ nw ¼	19	"	"	118	03	
Sw ¼	19	"	"	155	16	
N ½ ne ¼, sw ¼ ne ¼ & se ¼ nw ¼	21	"	"	160		
N ½ sw ¼, nw ¼ se ¼ & se ¼ se ¼	21	"	"	160		
Se ¼ ne ¼	23	"	"	40		
Se ¼ sw ¼	25	"	"	40		
Se ¼ ne ¼ & se ¼ sw ¼	27	"	"	80		
Ne ¼, s ½ nw ¼, w ½ sw ¼, ne ¼ sw ¼ & nw ¼ se ¼	29	"	"	400		
Ne ¼ ne ¼, se ¼ nw ¼ & n ½ sw ¼	31	"	"	156	17	
E ½ ne ¼ & sw ¼ nw ¼	33	"	"	120		
W ½ ne ¼, se ¼ nw ¼ & w ½ nw ¼	35	"	"	200		
E ½ sw ¼ & sw ¼ se ¼	35	"	"	117	31	
Nw ¼ sw ¼	35	54	15	40		

416 List No. 10 of selections of Public Lands in the .... Land District ....claimed by the Northern Pacific Railroad Company, as enuring to it under the Act of Congress approved July 2, 1864, and the Several Acts amendatory thereof.

DESCRIPTION OF TRACT	Sec.	Town.	Range	AREA		Remarks
				Acres	100ths	
W ½ ne ¼, s ½ nw ¼ & e ½ sw ¼	1	52	16	238	65	
Se ¼ ne ¼	3	"	"	40		
Se ¼ ne ¼ & nw ¼ se ¼	5	"	"	80		
W ½ ne ¼ & e ½ nw ¼	9	"	"	160		
N ½ ne ¼, ne ¼ nw ¼ & s ½ nw ¼	11	"	"	200		
Sw ¼ ne ¼, w ½ sw ¼, se ¼ sw ¼ & ne ¼ se ¼	11	"	"	200		
Lots 1, 2 & 3, sw ¼ ne ¼, sw ¼ sw ¼	13	"	"	208	10	
E ½ sw ¼ & w ½ se ¼	13	"	"	160		
E ½ ne ¼, nw ¼ ne ¼ & ne ¼ sw ¼	15	"	"	160		
N ½ se ¼, Lots 1 & 2	15	"	"	135	45	
Nw ¼ nw ¼, Lots 1 & 3, w ½ se ¼	23	"	"	190	70	
Lots 4, 5, 6, 7 & 8, e ½ sw ¼ & se ¼	25	"	"	389	15	
S ½ nw ¼ e ½ sw ¼, w ½ se ¼ & sw ¼ ne ¼	7	53	16	278	17	
Ne ¼ ne ¼	7	"	"	40		
Ne ¼ ne ¼ & s ½ & s ½ of n ½	9	"	"	360		
Se ¼ ne ¼, n ½ nw ¼ & nw ¼ sw ¼	11	"	"	160		
Se ¼ sw ¼ & nw ¼ se ¼	11	"	"	80		
Forward..................				22974	38	
Ne ¼, e ½ nw ¼ & nw ¼ nw ¼	13	53	16	280		
N ½ sw ¼ & sw ¼ sw ¼	13	"	"	120		
S ½ ne ¼ nw ¼ ne ¼ nw ¼	15	"	"	280		
N ½ of s ½, se ¼ sw ¼ & sw ¼ se ¼	15	"	"	240		
Ne ¼ ne ¼, sw ¼ ne ¼ & s ½ nw ¼	17	"	"	160		
Sw ¼ sw ¼, e ½ sw ¼ & se ¼	17	"	"	280		
E ½ ne ¼, sw ¼ ne ¼, se ¼ sw ¼ & [&] se ¼	19	"	"	320		
Ne ¼ ne ¼ sw ¼ & n ½ se ¼	21	"	"	280		
Ne ¼ ne ¼, w ½ ne ¼ & sw ¼ nw ¼	23	"	"	160		
Sw ¼, s½ se ¼ ne ¼ se ¼	23	"	"	280		
Ne ¼, nw ¼ nw ¼, se ¼ sw ¼ & ne ¼ se ¼	25	"	"	280		
Nw ¼ nw ¼	27	"	"	40		
W ½ ne ¼ nw ¼, n ½ of s ½ & se ¼ sw ¼	29	"	"	440		

417 List No. 10 of selections of Public Lands in the....... Land District ....claimed by the Northern Pacific Railroad Company, as enuring to it under the Act of Congress approved July 2, 1864, and the Several Acts amendatory thereof.

DESCRIPTION OF TRACT	Sec.	Town.	Range	AREA		Remarks
				Acres	100ths	
Se ¼ ne ¼, sw ¼, w ½ se ¼ & se ¼ se ¼	31	53	16	312	20	
Nw ¼ nw ¼	31	"	"	34	35	
Sw ¼ ne ¼ & se ¼ nw ¼	33	"	"	80		
Sw ¼ nw ¼ & nw ¼ sw ¼	35	"	"	80		
Se ¼ nw ¼	9	53	17	40		
Ne ¼, e ½ nw ¼ & sw ¼ nw ¼	11	"	"	280		
E ½ se ¼ & sw ¼ se ¼	11	"	"	120		
S ½ ne ¼, se ¼ nw ¼ & ne ¼ sw ¼	13	"	"	160		
N ½ se ¼	13	"	"	80		
Se ¼ ne ¼, nw ¼ ne ¼, w ½ se ¼ & se ¼ se ¼	15	"	"	200		
W ½ nw ¼, n ½ sw ¼, se ¼ sw ¼ & se ¼	25	"	"	360		
				27880	93	

418 State of Minn.,
County of Ramsey—ss.

I, Chas. B. Lamborn, being duly sworn, depose and say, that I am the Land Commissioner of the Northern Pacific Railroad Company; that the foregoing list of lands, which I hereby select, is a correct list of a portion of the public lands claimed by the said Northern Pacific Railroad Company as enuring to said company, to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the Northern route, for which a grant of land was made by the Act of Congress approved July 2nd, 1864, and the Joint Resolution approved May 31st, 1870; that the said lands are vacant unappropriated, and are not interdicted mineral or reserved lands, and are of the character contemplated by the grant, being within the limits of 30 miles on each side of the line of route for a continuous distance of ...... miles, being a portion of the lands for a section of ...... miles of said railroad, commencing .... and ending ....

(Signed) CHAS. B. LAMBORN [L. S.]

Sworn and subscribed before me this 13th day of October, 1883.

[Seal.] (Signed) GEO. W. BOARD,
Notary Public, Ramsey County, Minn.

United States Land Office.

Duluth, Minnesota, October 17th.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Northern Pacific Railroad Company, under the grant to the said company, by Act of Congress approved July 2nd, 1864, and Joint Resolution approved May 31st, 1870, and selected by said Northern Pacific Railroad Company by Chas. B. Lamborn, the duly authorized agent and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further testify that the filing of said list is allowed and approved and that the whole of said lands are surveyed public lands of the United States, and within the limits of 30 miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or any other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress approved July 1st, 1864, and contemplated by the circular of instructions dated Jan. 24th, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said company have paid to the undersigned, the Receiver, the full sum of Three hundred and forty-eight (348) Dollars, in full payment and discharge of said fees.

J. R. CAREY, Register.
W. W. SPALDING, Receiver.

419 COMPLAINANTS' EXHIBIT No. 20.—Being N. P. Selection List No. 10, dated October 10, 1887. Offered in evidence at page 211, this record.

420 Entered on plats and Tract Books as per instructions of Hon. Comrs. letter dated April 17, 1897.

(K.)

Reinstated and entered on Tract Books as per instructions of July 12, 1900.

Northern Pacific Railroad Company.
Duluth Selection List No. 10.
First Indemnity.
Duluth, U. S. Land District, Minnesota.

Filed October 10th, 1887.

W. COLVILL,
Register.

421

Land Department

Northern Pacific Railroad Company.
List No. 10, 1st Indem.

State of Minnesota.
U. S. Land Office at Duluth, 1891.

The Northern Pacific Railroad Company, under and by virtue of the Acts of Congress, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the northern route," approved July 2nd, 1864, and "A resolution authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road and to secure the same by mortgage, and for other purposes," approved May 31st, 1870, and in [and in] pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said Company, as enuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Act of Congress, and the location of the line of route of the railroad of the said Company, being for a section of .... miles of the same, commencing at .... and ending ....

The selections being particularly described as follows, to wit:

422 North of base line and West of 4th [Principle] Meridian.
Northern Pacific Railroad

List of Selections made at U. S. Land Office, Duluth, Minnesota.

PART OF SECTION	Sec.	Town.	Range	Acres	100ths
Lot 2 & 3	29	52	11	95	15
Sw ¼ sw ¼	7	53	11	41	56
Sw ¼ sw ¼	9	–	–	40	
E ½ & se ¼ nw ¼	17	–	–	360	
Nw ¼ ne ¼-ne ¼ ne ¼	19	–	–	80	
Sw ¼ nw ¼	21	–	–	40	
Nw ¼ nw ¼	31	–	–	39	27
N ½-s ½ sw ¼ & se ¼	3	52	12	568	80
Ne ¼ ne ¼-s ½ ne ¼-sw ¼ nw ¼ N ½ se ¼	5	–	–	243	17
Sw ¼ ne ¼-e ½ nw ¼-e ½ sw ¼ sw ¼ sw ¼-w ½ se ¼-se ¼ se ¼	7	–	–	360	72
E ½ & s ½ sw ¼	9	–	–	400	
W ½ se ¼	15	–	–	480	
N ½-w ½ se ¼-ne ¼ se ¼	17	–	–	440	
W ½ nw ¼-ne ¼ sw ¼-w ½ se ¼	1	53	12	199	71
Nw ¼ ne ¼-n ½ nw ¼-se ¼ nw ¼ se ¼ sw ¼ & se ¼	3	–	–	359	04
S ½ ne ¼-nw ¼ & se ¼	5	–	–	398	31
S ½ ne ¼-n ½ sw ¼-se ¼ sw ¼ W ½ se ¼ & ne ¼ se ¼	7	–	–	322	18
E ½ ne ¼-w ½ nw ¼-nw ¼ sw ¼-nw ¼ se ¼	11	–	–	240	
E ½ ne ¼-sw ¼ ne ¼ & se ¼	13	–	–	280	
Se ¼ sw ¼ & se ¼	17	–	–	200	
Nw ¼ ne ¼	21	–	–	40	
E ½ ne ¼-nw ¼ ne ¼-se ¼ sw ¼	23	–	–	160	
Se ¼ sw ¼-s ½ se ¼-ne ¼ se ¼	25	–	–	160	
Nw ¼ nw ¼ & se ¼ sw ¼	27	–	–	80	
Ne ¼ sw ¼	29	–	–	40	

423 North of base line and West of 4th [Principle] Meridian Tracts within Twenty miles of the line of the said railroad in lieu of which the selected tracts are taken.

PART OF SECTION	Sec.	Town.	Range	Acres	100ths	
						Swamp
~~E ½ nw ¼ ne ¼ sw ¼-w ½ sw ¼-s ½ se ¼~~	35	51	17	280		"
~~N ½ ne ¼~~	31	52	17	80		"
~~E ½ e ½ of w ½ & sw ¼ sw ¼~~	33	"	"	520		"
~~Nw ¼ sw ¼~~	25	52	18	40		"
~~Se ¼ sw ¼ & w ½ se ¼~~	27	"	"	120		"
~~Whole~~	31	"	"	611	58	"
~~"~~	33	"	"	640		"
~~Nw ¼ ne ¼ nw ¼~~	35	"	"	200		"
~~Ne ¼ nw ¼~~	3	51	18	40	48	"
~~N ½ sw ¼-nw ¼ se ¼~~	5	"	"	533	82	"
~~N ½ ne ¼-sw ¼ ne ¼ & nw ¼ nw ¼ sw ¼~~	7	"	"	293	82	"
~~Nw ¼ nw ¼-ne ¼ sw ¼-w ½ sw ¼~~	9	"	"	160		"
~~Se ¼ ne ¼-e ½ nw ¼ & nw ¼ sw ¼ se ¼ sw ¼ & se ¼~~	13	"	"	360		"
~~Sw ¼-w ½ se ¼-ne ¼ se ¼~~	15	"	"	280		"
~~Nw ¼ ne ¼-ne ¼ nw ¼-sw ¼ sw ¼ e ½ se ¼~~	17	"	"	200		"
~~Se ¼ se ¼~~	19	"	"	40		"
~~N ½ ne ¼ & e ½ se ¼~~	21	"	"	160		"
~~Sw ¼ ne ¼-se ¼ nw ¼-w ½ sw ¼~~	23	"	"	160		"
~~Se ¼ ne ¼-W ½ nw ¼~~	25	"	"	120		"
~~Nw ¼ nw ¼~~	27	"	"	40		"
~~Ne ¼ nw ¼ & Lot 1~~	29	"	"	96	25	"
~~W ½~~	3	48	19	324	56	"
~~Se ¼ ne ¼-w ½ ne ¼ nw ¼ nw ¼ sw ¼ e ½ sw ¼ & se ¼~~	5	"	"	567	87	"
~~Se ¼ se ¼~~	7	"	"	40		"
~~Whole~~	9	"	"	640		"

424 North of base line and West of 4th [Principle] Meridian.

Northern Pacific Railroad.

List of Selections made at U. S. Land Office, Duluth, Minnesota.

PART OF SECTION	Sec.	Town.	Range	Acres	100ths
~~Sw ¼ ne ¼ se ¼ nw ¼-sw ¼ w ½ se ¼ & se ¼ se ¼~~	31	53	12	363	99
~~Se ¼ sw ¼ & se ¼ w ½ ne ¼-e ½ nw ¼-w ½ sw ¼~~	33	“	“	440	
~~Se ¼ ne ¼ & se ¼~~	35	“	“	200	
~~N ½ nw ¼~~	31	54	12	83	65
~~N ½ sw ¼ se ¼ sw ¼ & se ¼~~	33	“	“	280	
~~Ne ¼ ne ¼ nw ¼ nw ¼~~	1	52	13	92	48
~~Ne ¼ nw ¼ & W ½ sw ¼~~	3	“	“	124	62
~~Nw ¼ nw ¼~~	5	“	“	42	83
~~Ne ¼ e ½ nw ¼-sw ¼ nw ¼ n ½ sw ¼-n ½ se ¼ & se ¼ se ¼~~	7	“	“	473	12
~~E ½ e ½ sw ¼ ne ¼-nw ¼ se ¼~~	9	“	“	240	
~~Ne ¼ sw ¼ & s ½ s ½~~	11	“	“	200	
Forward....................				8208	60
~~Ne ¼-ne ¼ se ¼-s ½ se ¼~~	13	52	13	280	
~~Ne ¼-s ½ nw ¼~~	15	“	“	240	
~~N ½ ne ¼-se ¼ ne ¼-se ¼ nw ¼~~	1	53	13	156	72
~~W ½ nw ¼-ne ¼ sw ¼-nw ¼ se ¼~~	“	“	“	158	06
~~Lot 4~~	3	“	“	33	10
~~Ne ¼ sw ¼~~	5	“	“	40	
~~Lots 2, 4, 5, 6 & 7-s ½ nw ¼ ne ¼ sw ¼ & se ¼ se ¼~~	7	“	“	351	44
~~Lot 2~~	9	“	“	33	84
~~S ½ ne ¼-e ½ sw ¼-nw ¼ se ¼~~	11	“	“	200	
~~Se ¼ se ¼~~	13	“	“	40	
~~Sw ¼ ne ¼-nw ¼ se ¼-se ¼ se ¼~~	25	“	“	120	
~~Lot 7~~	25	54	13	27	
Sw ¼ nw ¼ & w ½ sw ¼	27	“	“	120	

425 North of base line and West of 4th [Principle] Meridian Tracts within Twenty miles of the line of said railroad in lieu of which the selected tracts are taken.

PART OF SECTION	Sec.	Town.	Range	Acres	100ths	Swamp
Ne ¼-ne ¼ nw ¼	11	48	19	200		“
E ½ of E ½-sw ¼ ne ¼-s ½ sw ¼	17	“	“	277	02	“
W ½ sw ¼ se ¼-Lots 2, 3, 4 & 5	19	“	“	332	62	“
Nw ¼ nw ¼	29	“	“	40		“
Nw ¼	31	“	“	183	47	“
Sw ¼ sw ¼-Lots 5 & 6	3	49	19	120		“
Lot 1-sw ¼ nw-¼ sw ¼ & sw ¼ se ¼	5	“	“	296	59	“
Nw ¼ nw ¼-s ½ se ¼	7	“	“	12	21	“
W ½ w ½	9	“	“	160		“
Nw ¼-sw ¼ sw ¼-e ½ sw ¼	15	“	“	280		“
Nw ¼ ne ¼-nw ¼-nw ¼ sw ¼	17	“	“	240		“
Nw ¼ ne ¼-e ½ nw ¼-sw ¼ nw ¼ w ½ sw ¼-e ½ se ¼	21	“	“	320		
Forward.................				9124	29	
Nw ¼-w ½-sw ¼-ne ¼ sw ¼	27	49	19	280		“
N ½ n ½-nw ¼ sw ¼	29	“	“	200E	½-	“
E ½-e ½ w ½ & Lot 4	31	“	“	529	45	“
Ne ¼-e ½ nw ¼-nw ¼ nw ¼-nw ¼ sw ¼ e ½ sw ¼-w ½ se ¼ & se ¼ se ¼	33	“	“	520		“
Sw ¼ se ¼	5	50	19	40		“
Lot 4-e ½ sw ¼-sw ¼ se ¼-e ½ se ¼	7	“	“	232	52	“
Se ¼ sw ¼-sw ¼ se ¼	9	“	“	80		“
Ne ¼ nw ¼-sw ¼ sw ¼	17	“	“	80		“
Ne ¼ ne ¼-se ¼ se ¼	19	“	“	80		“
Nw ¼ nw ¼	23	“	“	40		“
Sw ¼ sw ¼-ne ¼ se ¼	29	“	“	80		“
Whole	31	“	“	618	78	“
“	33	“	“	640		“
“	1	51	19	630	08	“
“	3	“	“	627	22	“

426 North of base line and West of 4th [Principle] Meridian.

Northern Pacific Railroad.

List of Selections made at U. S. Land Office, Duluth, Minnesota.

PART OF SECTION	Sec.	Town.	Range	Acres	100ths
~~Se ¼ ne ¼-se ¼ sw ¼-sw ¼ se ¼ & Lot 7~~	29	54	13	121	75
~~S ½ ne ¼-fract.~~	31	"	"	78	50
~~N ½ ne ¼-se ¼ ne ¼-se ¼ sw ¼ sw ¼ se ¼~~	35	"	"	200	
Ne ¼ nw ¼	1	52	14	42	04
~~Nw ¼ ne ¼ & Lot 1~~	3	"	"	83	21
~~E ½ ne ¼-n ½ sw ¼ & sw ¼ sw ¼~~	5	"	"	201	55
~~N ½ ne ¼-e ½ se ¼~~	7	"	"	160	
~~Lot 1 nw ¼ nw ¼-nw ¼ sw ¼~~	9	"	"	127	12
~~Nw ¼ ne ¼-ne ¼ nw ¼~~	13	"	"	80	
~~Se ¼ ne ¼-w ½ ne ¼~~	15	"	"	120	
~~Nw ¼~~	17	"	"	160	
Lot 5	"	"	"	1	34
~~N ½ & sw ¼~~	3	53	14	449	86
~~N ½ & n ½ sw ¼-se ¼ sw ¼ & se ¼~~	5	"	"	563	20
~~W. ½ ne ¼-se ¼ ne ¼-w ½ nw ¼~~	7	"	"	205	97
~~N ½ n ½-sw ¼-w ½ se ¼-ne ¼ se ¼~~	9	"	"	440	
~~E ½ nw ¼ & sw ¼ nw ¼~~	15	"	"	120	
~~N ½ ne ¼~~	17	"	"	80	
~~Sw ¼ ne ¼~~	19	"	"	40	
~~Nw ¼ sw ¼~~	21	"	"	40	
~~Nw ¼ ne ¼-e ½ nw ¼-n ½ sw ¼~~	29	"	"	200	
~~Ne ¼~~	31	"	"	160	
~~Lots 5-6 & 7 & Island No. 1~~	33	"	"	78	10
~~S ½ of N ½~~	25	54	14	160	
~~Sw ¼ sw ¼~~	27	"	"	40	
Forward..................				13961	40

427 North of base line and West of 4th [Principle] Meridian. Tracts within Twenty miles of the line of the said railroad in lieu of which the selected tracts are taken.

PART OF SECTION	Sec.	Town.	Range	Acres	100ths	
Whole	5	51	19	652	32	Swamp "
N ½ Lot 3	7	51	19	344	44	"
E ½ ne ¼-sw ¼ ne ¼-s ½ nw ¼ N ½ sw ¼-se ¼ sw ¼ & se ¼	9	"	"	480		"
N ½ sw ¼ & n ½ se ¼	11	"	"	360		"
Se ¼ ne ¼-ne ¼ nw ¼-sw ¼ sw ¼	13	"	"	120		"
W ½ e ½, w ½ & se ¼ se ¼	15	"	"	520		"
Se ¼ ne ¼-ne ¼ se ¼	17	"	"	80		"
Lot 3	19	"	"	34	31	"
N ½ ne ¼	21	"	"	80		"
Lot 4	25	"	"	20	25	"
Lots 1 & 2	27	"	"	43	55	"
Nw ¼ sw ¼-s ½ s ½	33	"	"	200		"
Lot 1	31	"	"	34	35	"
Se ¼	25	52	19	160		"
Sw ¼ nw ¼-nw ¼ sw ¼ e ½ sw ¼ & se ¼	29	"	"	320		"
Whole	31	"	"	622	92	"
N ½ ne ¼-w ½-w ½ se ¼	33	"	"	480		"
E ½ ne ¼-s ½ sw ¼ & se ¼	35	"	"	320		"
Sw ¼ nw ¼	5	46	20	40		"
Lot 4	7	"	"	22	30	"
W ½ sw ¼	17	"	"	80		"
Sw ¼ se ¼ & ne ¼ se ¼	19	"	"	80		"
Forward..................				19096	78	
Sw ¼ nw ¼	1	47	20	39	60	"
Lot 1-s ½ nw ¼-w ½ sw ¼	3	"	"	200	85	"
Lots 1, 2, 4 & se ¼ se ¼	7	"	"	132	16	"

428 North of base line and West of 4th [Principle] Meridian. Northern Pacific Railroad.

List of Selections made at U. S. Land Office, Duluth, Minnesota.

PART OF SECTION	Sec.	Town.	Range	Acres	100ths
Forward..................				13961	40
~~Nw ¼ ne ¼-w ½ se ¼-se ¼ se ¼~~	31	54	14	160	
~~W ½ se ¼-se ¼ se ¼~~	33	"	"	120	
~~W ½-n ½ se ¼-se ¼ se ¼~~	35	"	"	440	
~~Lots 1, 8, 8 & 9~~	1	52	15	109	33
~~Sw ¼ & nw ¼-se ¼ se ¼~~	3	"	"	80	
Sw ¼ nw ¼-nw ¼ ne ¼-e ½ nw ¼ & nw ¼ se ¼	7	"	"	193	09
Sw ¼ ne ¼	9	"	"	40	
~~Lots 6 & 7~~	11	"	"	56	51
~~W ½ ne ¼-se ¼~~	13	"	"	240	
Se ¼ ne ¼-w ½ ne ¼ e ½ nw ¼ Lots 1-2-3-4 & 7	17	"	"	380	87
Lots 2-3-6-7 & 8	19	"	"	176	48
~~Se ¼ ne ¼-se ¼ nw ¼-sw ¼ sw ¼~~	23	"	"	120	
Se ¼ nw ¼-w ½ nw ¼	27	"	"	120	
Lot 2 & e ½ nw ¼	29	"	"	120	36
Lot 2 n ½ ne ¼-nw ¼-sw ¼ sw ¼	31	"	"	309	03
~~N ½ ne ¼-sw ¼ ne ¼-e ½ nw ¼ & n ½ sw ¼~~	1	53	15	250	03
~~S ½ ne ¼-n ½ se ¼~~	3	"	"	160	
~~Se ¼ ne ¼~~	5	"	"	40	
Sw ¼ sw ¼			31-81	Not canceled.	
~~Se ¼ ne ¼-w ½ ne ¼-w ½ & se ¼~~	7	"	"	596	88
~~Se ¼ ne ¼-ne ¼ nw ¼-se ¼ sw ¼ n ½ se ¼~~	11	"	"	200	
Lot 1	13	"	"	29	51
S ½ sw ¼-sw ¼ se ¼-n ½ se ¼	17	"	"	200	
	Not canceled			233	19
~~Ne ¼ ne ¼~~-sw ¼ ne ¼-nw ¼ nw ¼ & sw ¼	19	"	"	273	19

429 North of base line and West of 4th [Principle] Meridian. Tracts within Twenty miles of the line of said railroad in lieu of which the selected tracts are taken.

PART OF SECTION	Sec.	Town.	Range	Acres	100ths	Swamp
N ½ ne ¼-nw ¼ sw ¼-se ¼ se ¼	9	47	20	160		"
Ne ¼ ne ¼-sw ¼ sw ¼	11	"	"	80		"
W ½ ne ¼-ne ¼ nw ¼ & s ½ sw ¼	15	"	"	160		"
Nw ¼ nw ¼-sw ¼ se ¼	17	"	"	80		"
Lots 2 & 3 & se ¼ sw ¼	19	"	"	97	92	"
E ½ e ½	21	"	"	160		"
W ½ sw ¼	29	"	"	80		"
Se ¼ ne ¼ w ½ ne ¼-e ½ nw ¼ & se ¼ sw ¼ nw ¼-w ½ sw ¼-ne ¼ sw ¼	31	"	"	484	30	"
N ½ sw ¼-sw ¼ sw ¼ & n ½	1	48	20	444	80	"
Lots 1, 2, 3 se ¼ ne ¼-e ½ se ¼	5	"	"	249	15	"
Ne ¼ se ¼	7	"	"	40		"
Sw ¼ sw ¼	9	"	"	40		"
Ne ¼-s ½ sw ¼-sw ¼ se ¼	11	"	"	280		"
W ½ ne ¼-e ¼ nw ¼-nw ¼ nw ¼ & s ½	13	"	"	520		"
Nw ¼ ne ¼ & Lot 1	19	"	"	89	96	"
Ne ¼-ne ¼ nw ¼-sw ¼ nw ¼	23	"	"	240		"
E ½-e ½ nw ¼ & sw ¼	25	"	"	560		"
Sw ¼ nw ¼-sw ¼-w ½ se ¼ & se ¼ se ¼	27	"	"	320		"
Ne ¼ se ¼ se ¼ ne ¼ w ½ ne ¼-e ½ nw ¼- nw ¼ sw ¼-e ½ sw ¼- w ½ se ¼	29	"	"	440		"
Sw ¼ ne ¼-s ½ nw ¼-n ½ sw ¼ & sw ¼ sw ¼	33	"	"	240		"
E ½ ne ¼-nw ¼ nw ¼ & s ½ s ½	35	"	"	280		"
Lots 1, 2, 3 & se ¼ se ¼	3	49	20	157	08	"
Sw ¼	5	"	"	160		"
N ½-n ½ sw ¼ & se ¼	7	"	"	559	94	"
Sw ¼ sw ¼-ne ¼ se ¼	9	"	"	80		"

430 North of base line and West of 4th [Principle] Meridian. Northern Pacific Railroad.

List of Selections made at U. S. Land Office, Duluth, Minnesota.

PART OF SECTION	Sec.	Town.	Range	Acres	100ths
~~N ½ ne ¼ sw ¼ ne ¼ se ¼ nw ¼~~ n ~~½ sw ¼ nw ¼ se ¼ & se ¼ of se~~ ¼	21	"	"	320	
~~Se ¼ ne ¼~~	23	"	"	40	
~~Se ¼ sw ¼~~	25	"	"	40	
~~Se ¼ ne ¼-se ¼ sw ¼~~	27	"	"	80	
~~Ne ¼-s ½ nw ¼-w ½ sw ¼~~	29	"	"	160 not canceled	
Sw ¼ nw ¼, n ½ sw ¼ & sw ¼ sw ¼	29	"	"	400	
~~Ne ¼ sw ¼-nw ¼ se ¼~~					
Nw ¼, se ¼ nw ¼ nw ¼ se ¼ sec.	29	canceled by F. April 17/97			
~~Ne ¼ ne ¼-se ¼ nw ¼-n ½ sw ¼~~	31	"	"	156	17
~~E ½ ne ¼-sw ¼ nw ¼~~	33	"	"	120	
~~W ½ ne ¼-se ¼ nw ¼-w ½ nw~~ ¼ ~~e ½ sw ¼-sw ¼ se ¼~~	35	"	"	317	31
~~Nw ¼ sw ¼~~	35	54	15	40	
Stet					
W ½ ne ¼-s ½ nw ¼-e ½ sw ¼	1	52	16	238	65
Se ¼ ne ¼	3	"	"	40	
Forward..................				20172	81
Se ¼ ne ¼-nw ¼ se ¼	5	52	16	80	
W ½ ne ¼-e ½ sw ¼	9	"	"	160	
N ½ ne ¼-ne ¼ nw ¼ s ½ nw ¼-sw ¼ ne ¼-w ½ sw ¼ se ¼ sw ¼-ne ¼ se ¼	11	"	"	400	
Lot 1, 2, 3 sw ¼ ne ¼ & sw ¼ sw ¼ e ½ sw ¼-w ½ se ¼	13	"	"	368	10
E ½ ne ¼-nw ¼ ne ¼-ne ¼ sw ¼ n ½ se ¼-Lots 1 & 2	15	"	"	295	45
Nw ¼ nw ¼-Lots 1 & 3 & w ½ se ¼	23	"	"	190	70
	25	"	"	389	15
S ½ nw ¼-e ½ sw ¼-w ½ se ¼ sw ¼ ne ¼-ne ¼ ne ¼	7	53	16	318	17
Ne ¼ ne ¼-s ½-s ½ n ½	9	"	"	360	

431 North of base line and West of 4th [Principle] Meridian. Tracts within Twenty miles of the line of the said railroad in lieu of which the selected tracts are taken.

PART OF SECTION	Sec.	Town.	Range	Acres	100ths	
Whole	11	49	20	640		Swamp
E ½-e ½ nw ¼-sw ¼ nw ¼ nw ¼ sw ¼ & e ½ sw ¼	13	"	"	560		"
E ½-sw ¼-& Lot 2	21	"	"	529	60	"
N ½ nw ¼ & w ½ sw ¼	33	"	"	160		"
Ne ¼ nw ¼-& w ½ nw ¼	27	"	"	120		"
Forward..................				27482	14	
Ne ¼-n ½ nw ¼-nw ¼ sw ¼-se ¼ se ¼	29	49	20	320		"
W ½ nw ¼	35	"	"	80		"
Total..................				27882	14	

6666.

432 North of base line and West of 4th [Principal] Meridian.
Northern Pacific Railroad.

List of Selections made at U. S. Land Office, Duluth, Minnesota.

PART OF SECTION	Sec.	Town.	Range	Acres	100ths
Se ¼ ne ¼-n ½ nw ¼-nw ¼- sw ¼ se ¼ sw ¼ & nw ¼ se ¼	11	53	16	240	
Ne ¼-e ½ nw ¼-nw ¼ nw ¼ n ½ sw ¼-sw ¼ sw ¼	13	"	"	400	
S ½ ne ¼-nw ¼ ne ¼-nw ¼ n ½ s ½-se ¼ sw ¼ & sw ¼ se ¼	15	"	"	520	
Ne ¼ ne ¼-sw ¼ ne ¼-s ½ nw ¼ sw ¼ sw ¼-e ½ sw ¼-se ¼	17	"	"	440	
E ½ ne ¼-sw ¼ ne ¼-se ¼ sw ¼ & se ¼	19	"	"	320	
Ne ½-ne ¼ sw ¼-n ½ se ¼	21	"	"	280	
Ne ¼ ne ¼- w ½ ne ¼- sw ¼ nw ¼ sw ¼-s ½ se ¼- ne ¼ se ¼	23	"	"	440	
Ne ¼-nw ¼ nw ¼-se ¼ sw ¼ ne ¼ se ¼	25	"	"	280	
Nw ¼ nw ¼	27	"	"	40	
W ½ ne ¼-nw ¼-n ½ s ½-se ¼ sw ¼	29	"	"	440	
Se ¼ ne ¼-sw ¼-w ½ se ¼ se ¼ se ¼-nw ¼ nw ¼	31	"	"	346	55
Sw ¼ ne ¼ & se ¼ nw ¼	33	"	"	80	
Sw ¼ nw ¼-nw ¼ sw ¼	35	"	"	80	
Se ¼ nw ¼	9	53	17	40	
Ne ¼-e ½ nw ¼-sw ¼ nw ¼ e ½ se ¼-sw ¼ se ¼	11	"	"	400	
S ½ ne ¼-se ¼ nw ¼-ne ¼ sw ¼ n ½ se ¼	13	"	"	240	
Se ¼ ne ¼-nw ¼ ne ¼-w ½ se ¼-se ¼ se ¼	15	"	"	200	
Forward..................				27520	93
W ½ nw ¼-n ½ sw ¼-se ¼ sw ¼-se ¼	25	53	17	360	
Total..................				27880	93

No. 10 Copy.

433 State of Minn.,
County of Ramsey—ss.

I, Chas. B. Lamborn, being duly sworn, depose and say, that I am the Land Commissioner of the Northern Pacific Railroad Company; that the foregoing list of lands, which I hereby select, is a correct list of a portion of the public lands claimed by the said Northern Pacific Railroad Company as enuring to said company, to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the Northern route, for which a grant of land was made by the Act of Congress approved July 2nd, 1864, and the Joint Resolution approved May 31st, 1870; that the said lands are vacant, unappropriated, and are not interdicted mineral or reserved lands, and are of the character contemplated by the grant, being within the limits of 30 miles on each side of the line of route for a continuous distance of ...... miles, being a portion of the lands for a section of ...... miles of said railroad, commencing .... and ending ....

(Signed) CHAS. B. LAMBORN [L. S.]

Sworn and subscribed before me this 13th day of October, 1883.

[Seal.] (Signed) GEO. W. BOARD,
Notary Public, Ramsey County, Minn.

State of Minnesota,
County of Ramsey—ss.

Charles B. Lamborn, being duly sworn on oath deposes and says that I am the Land Commissioner of the Northern Pacific Railroad Company, and that the foregoing paper attached hereto, is a true and correct copy of the list of selections of railroad lands and affidavit of the said Land Commissioner thereto, and of the acceptance and approval thereof duly made on the 17th day of October, 1883, by the Register and Receiver of the United States Land Office of Duluth District State of Minnesota and that the said list is numbered 10 and contains 27880 93/100 acres, more or less.

CHAS. B. LAMBORN,
Land Commissioner.

Sworn and subscribed before me this 7th day of October, 1887.

[Seal.] P. P. STARM,
Notary Public, Ramsey County, Minn.

434 United States Land Office.

Duluth, Minnesota, October 17th, 1883.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Northern

Pacific Railroad Company, under the grant to the said company, by Act of Congress approved July 2nd, 1864, and Joint Resolution approved May 31st, 1870, and selected by said Northern Pacific Railroad Company by Chas. B. Lamborn, the duly authorized agent and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved and that the whole of said lands are surveyed public lands of the United States, and within the limits of 30 miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or any other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress approved July 1st, 1864, and contemplated by the circular of instructions dated November 7th, 1879, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said company have paid to the undersigned, the Receiver, the full sum of Three hundred and forty-eight (348) Dollars, in full payment and discharge of said fees.

(Signed) J. R. CAREY, Register.
(Signed) W. W. SPALDING, Receiver.

435 State of Minn.,
County of Ramsey—ss.

I, Chas. B. Lamborn, being duly sworn, depose and say, that I am the Land Commissioner of the Northern Pacific Railroad Company; that the foregoing list of lands, which I have heretofore selected, is a correct list of a portion of the public lands claimed by the said Northern Pacific Railroad Company as enuring to said Company, to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the Northern route, for which a grant of land was made by the Act of Congress approved July 2nd, 1864, and the Joint Resolution approved May 31st, 1870; that the said lands are vacant, unappropriated, and are not interdicted mineral or reserved lands, and are of the character contemplated by the grant, being within the limits of Thirty miles on each side of the line of route; that the specific losses for which the indemnity is claimed are truly set forth and described in this list, and that said losses have not heretofore been indemnified in any manner.

CHAS. B. LAMBORN [L. S.]

Sworn and subscribed before me this 7th day of October, 1887.

[Seal.] P. P. STARM,
Notary Public, Ramsey County, Minn.

436 COMPLAINANTS' EXHIBIT No. 21.—Being Northern Pacific Selection List No. 10, dated July 19, 1891. Offered in evidence at page 211, this record.

437 Re-Arranged Indemnity List
Selections and Losses
Tract for Tract

Form L. D—153

Filed ....189 Approved.......... 189

Land Department
Northern Pacific Railroad Co.
LIST No. 10 (1ST INDEMNITY)
of selections of public lands made by the
NORTHERN PACIFIC RAILROAD COMPANY
as enuring to it under grants of July 2, 1864,
and May 31, 1870, in the
Duluth U. S. Land District,
Minnesota.

Filed June 19th, 1891.
W. COLVILL,
Register.

Entered on plats & tract books.

438 Land Department Northern Pacific Railroad Company.
List No. 16 (1st Indemnity)
State of Minnesota, U. S. Land Office at Duluth.

Whereas, The Northern Pacific Railroad Company has heretofore, to wit, on the 17th day of October, 1883, duly selected under the directions of the Secretary of the Interior, those certain tract- and parcels of land particularly set forth and described in Duluth List No. 10, filed in the United States District Land Office at Duluth, Minn., on the 17th day of October, 1883, as indemnity for certain tracts and parcels of odd-numbered sections of land within the place limits of the grant to said Railroad Company, which said tracts were reserved, sold, granted, or otherwise appropriated or not free from pre-emption or other claims or rights, at the time the line of its road was definitely located, in accordance with the provisions of the Act of Congress approved July 2, 1864; and of the Joint Resolution of Congress, approved May 31st 1870; which lands so selected are on and within thirty miles of the line of the said road as so definitely located;

And Whereas, Acting under the said directions of the Secretary of the Interior, the said Northern Pacific Railroad Company did not in said selection list designate the tracts of land in lieu of which such selections were made;

And Whereas, under the further directions of the Secretary of the Interior issued August 4th, 1885, and since the filing of said Duluth List No. 10, said Northern Pacific Railroad Company has heretofore, to-wit, on the 10th day of October, 1887, duly filed with the Register and Receiver of said United States Land Office at Duluth, a list specifically describing the tracts excepted from its grant and in lieu of which said selections were made; as aforesaid;

And Whereas, the Secretary of the Interior has, since the filing of said above described list, further directed that said lists shall be re-arranged so they shall indicate the specific loss in lieu of which each specific selection has been made;

Now Therefore, to comply with the further requirements of the Interior Department, but not waiving or abandoning any rights or claims heretofore acquired by virtue of its selections heretofore made under the directions of the Secretary of the Interior, the said Northern Pacific Railroad Company has herein designated the lands heretofore selected as indemnity in said Duluth List No. 10, and no other lands, and has herein set opposite each specific description of land so selected the description of the land lost from its grant in place, and in lieu of which such indemnity land was selected; the said losses being the same identical lands and no other, as those described in said list of losses filed in the United States Land Office at Duluth on the 10th day of October, 1887, as aforesaid.

(Signed) GEO. W. BOARD,
Asst. Land Commissioner Northern Pacific
Railroad Company.

St. Paul, Minn., June 9th, 1891.
Sworn and subscribed to before me this 9th day of June, 1891.

Seal (Signed) P. P. STARRIN,
Notary Public, Ramsey Co., Minn.

The Northern Pacific Railroad Company, under and by virtue of the Act of Congress, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the northern

route," approved July 2nd, 1864, and "A resolution authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road, and to secure the same by mortgage, and for other purposes," approved May 31st, 1870, and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said company, as enuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Act of Congress and the location of the line of route of the railroad of the said Company; being for a section of .... miles of the same, commencing at .... and ending ....
The selection being particularly described as follows, to wit:

North of base line and West of 4th Principal Meridian.
Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
					Acres	100ths	
1	Lots 2 & 3	29	52	11	95	15	In lieu of
2	Sw ¼ sw ¼	7	53	11	41	56	"
3	Sw ¼ sw ¼	9	"	"	40		"
4	N ½ ne ¼	17	"	"	80		"
5	S ½ ne ¼	"	"	"	80		"
6	Se ¼ nw ¼ & se ¼	"	"	"	200		"
7	Nw ¼ ne ¼ & ne ¼ nw ¼	19	"	"	80		"
8	Sw ¼ nw ¼	21	"	"	40		"
9	Nw ¼ nw ¼	31	"	"	39	27	"
10	Ne ¼	3	52	12	163	80	"
11	Ne ¼ nw ¼	"	"	"	42	35	"
12	W ½ nw ¼ & se ¼ nw ¼	"	"	"	122	65	"
13	S ½ sw ¼	"	"	"	80		"
14	Se ¼	"	"	"	160		"
15	E ½ ne ¼-sw ¼ ne ¼ & sw ¼ nw ¼	5	"	"	163	17	"
	sw ¼	7	"	"	240	72	"
16	N ½ se ¼	"	"	"	80		"
17	Sw ¼ ne ¼-e ½ nw ¼ ne ¼ sw ¼ & s ½						
18	W ½ se ¼ & se ¼ se ¼	"	"	"	120		"
19	Ne ¼ ne ¼	9	"	"	40		~~Held to U. S. In lieu of Jan. 25 1900.~~
20	W ½ ne ¼ & se ¼ ne ¼	"	"	"	120		
21	S ½ sw ¼ & se ¼	"	"	"	240		In lieu of
22	Nw ¼-n ½ sw ¼ & sw ¼ sw ¼	15	"	"	280		"
23	Se ¼ sw ¼ & se ¼	"	"	"	200		"
24	Se ¼ ne ¼	17	"	"	40		"
25	N ½ ne ¼-sw ¼ ne ¼ & se ¼ nw ¼	"	"	"	160		"
26	N ½ nw ¼-sw ¼ nw ¼ & nw ¼ se ¼	"	"	"	160		"
27	Ne ¼ se ¼ & sw ¼ se ¼	"	"	"	80		"
28	Nw ¼ nw ¼	1	53	12	39	71	"
29	Sw ¼ nw ¼	"	"	"	40		"
30	W ½ se ¼	"	"	"	80		"
31	Ne ¼ sw ¼	"	"	"	40		"
32	Nw ¼ ne ¼ & n ½ nw ¼	3	"	"	119	04	"
33	Se ¼ nw ¼ & se ¼ sw ¼	"	"	"	80		"
34	Se ¼	"	"	"	160		"
35	S½ ne ¼	5	"	"	80		"
36	Nw ¼ se ¼	"	"	"	318	31	"
37	S ½ ne ¼-n ½ se ¼-sw ¼ se ¼ e ½ sw ¼ & nw ¼ sw ¼	7	"	"	322	18	"
38	E ½ ne ¼-nw ¼ se ¼-nw ¼ sw ¼ & w ½ nw ¼	11	"	"	240		"
39	E ½ ne ¼	13	"	"	80		"
	Forward				4787	91	

439 **North of base line and West of 4th Principal Meridian.**

Tracts within Twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	666666 PART OF SECTION	Sec.	Town.	Range	AREA Acres	 100ths	REMARKS
1	E ½ nw ¼ & ne ¼ sw ¼	35	51	17	120		Swamp Patented Oct. 22/80
2	Sw ¼ se ¼	"	"	"	40		" " " "
3	Nw ¼ sw ¼	"	"	"	40		" " " "
4	Sw ¼ sw ¼ & se ¼ se ¼	"	"	"	80		" " " "
5	N ½ ne ¼	31	52	17	80		" " " "
6	Ne ¼ & ne ¼ se ¼	33	"	"	200		" " " "
7	S ½ se ¼	"	"	"	80		" " " "
8	Nw ¼ se ¼	"	"	"	40		" " "
9	Ne ¼ nw ¼	"	"	"	40		" " " "
10	Se ¼ nw ¼-e ½ sw ¼ & sw ¼ sw ¼	"	"	"	160		" " " "
11	Ne ¼ nw ¼ (or Lot 3)	3	51	18	40	57	" " Oct. 12/80
12	Lot 4 & s ½ nw ¼	5	"	"	122		" " " "
13	Lots 2 & 3	"	"	"	86	92	" " " "
14	Lot 1-s ½ ne ¼ & nw ¼ se ¼	"	"	"	164	90	" " " "
15	Sw ¼	"	"	"	160		" " " "
16	N ½ ne ¼	7	"	"	80		" " " "
17	Sw ¼ ne ¼-nw ¼ & Lot 3	"	"	"	213	81	" " " "
18	N ½ sw ¼ & sw ¼ sw ¼	9	"	"	120		" " " "
19	Nw ¼ nw ¼	"	"	"	40		" " " "
20	Se ¼ ne ¼ & e ½ nw ¼	13	"	"	120		" " " "
21	Nw ¼ sw ¼-se ¼ sw ¼ & se ¼	"	"	"	240		" " " "
22	Sw ¼-w ½ se ¼ & ne ¼ se ¼	15	"	"	280		" " " "
23	Nw ¼ ne ¼-ne ¼ nw ¼-sw ¼ sw ¼ & e ½ se ¼	17	"	"	200		" " " "
24	Se ¼ se ¼	19	"	"	40		" " " "
25	N ½ ne ¼ & e ½ se ¼	21	"	"	160		" " " "
26	Sw ¼ ne ¼-se ¼ nw ¼ & n ½ sw ¼	23	"	"	160		" " " "
27	Se ¼ ne ¼ & nw ¼ nw ¼	25	"	"	80		" " "
28	Sw ¼ nw ¼	"	"	"	40		" " " "
29	Nw ¼ nw ¼	27	"	"	40		" " " "
30	Ne ¼ nw ¼ & Lot 1	29	"	"	98	25	" " " "
31	Nw ¼ sw ¼	25	52	18	40		" " Oct. 22/80
32	Se ¼ sw ¼ & w ½ se ¼	27	"	"	120		" " " "
33	Lot 1 & ne ¼ nw ¼	31	"	"	70	57	" " " "
34	Lots 3 & 4 & e ½ sw ¼	"	"	"	148	89	" " " "
35	Lot 2 & se ¼ nw ¼	"	"	"	72	12	" " " "
36	E ½	"	"	"	320		" " " "
37	N ½	33	"	"	320		" " " "
38	Sw ¼ & w ½ se ¼	"	"	"	240		" " " "
39	E ½ se ¼	"	"	"	80		" " " "
	Forward				4778	03	

North of base line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
					Acres	100ths	
		Forward			4787	.91	
40	Sw ¼ ne ¼ & se ¼	13	53	12	200		In lieu of
41	Se ¼ sw & se ¼	17	"	"	200		"
42	Nw ¼ ne ¼	21	"	"	40		"
43	N ½ ne ¼	23	"	"	80		"
44	Se ¼ ne ¼ & se ¼ sw ¼	"	"	"	80		"
45	Se ¼ sw ¼-ne ¼ se ¼ & s ½ se ¼	25	"	"	160		"
46	Nw ¼ nw ¼ & se ¼ sw ¼	27	"	"	80		"
47	Ne ¼ sw ¼	29	"	"	40		"
48	Se ¼ nw ¼ & sw ¼	31	"	"	203	.99	"
49	Sw ¼ ne ¼	"	"	"	40		"
50	W ½ se ¼ & se ¼ se ¼	"	"	"	120		"
51	W ½ ne ¼ & ne ¼ nw ¼	33	"	"	120		"
52	Se ¼ nw ¼-w ½ sw ¼-se ¼ sw ¼ & se ¼	"	"	"	320		"
53	Se ¼ ne ¼ & ne ¼ se ¼	35	"	"	80		"
54	W ½ se ¼ & se ¼ se ¼	"	"	"	120		"
55	Lot 1 & ne ¼ nw ¼	31	54	12	83	.65	"
56	Nw ¼ sw ¼-e½ sw ¼ & se ¼	33	"	"	280		"
57	Ne ¼ ne ¼ & nw ¼ nw ¼	1	52	13	92	.43	"
58	Ne ¼ nw ¼ & w ½ sw ¼	3	"	"	124	.62	"
59	Nw ¼ nw ¼	5	"	"	42	.83	"
60	Ne ¼-e ½ nw ¼ & sw ¼ nw ¼	7	"	"	276	.45	"
61	Nw ¼ sw ¼	"	"	"	36	.67	"
62	N ½ se ¼-se ¼ se ¼ & ne ¼ sw ¼	"	"	"	160		"
63	Ne ¼ ne ¼	9	"	"	40		"
64	Sw ¼ ne ¼	"	"	"	40		"
65	Se ¼ ne ¼	"	"	"	40		"
66	Nw ¼ se ¼ & e ½ se ¼	"	"	"	120		"
67	Sw ¼ sw ¼-e ½ sw ¼ & sw ¼ se ¼	11	"	"	160		"
68	Se ¼ se ¼	"	"	"	40		"
69	N ½ ne ¼	13	"	"	80		"
70	S ½ ne ¼ & e ½ se ¼	"	"	"	160		"
71	Sw ¼ se ¼	"	"	"	40		"
72	Ne ¼ & s ½ nw ¼	15	"	"	240		"
73	N ½ ne ¼-se ¼ ne ¼-se ¼ nw ¼ & w ½ nw ¼	1	53	13	234	.78	"
74	Ne ¼ sw ¼ & nw ¼ se ¼	"	"	"	80		"
75	Lot 4	3	"	"	33	.10	"
76	Ne ¼ sw ¼	5	"	"	40		"
77	Lots 2 & 4	7	"	"	93	.76	"
78	Lots 5-6-7	"	"	"	97	.55	"
		Forward			9307	.74	

440 North of base line and West of 4th Principal Meridian. Tracts within Twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA Acres 100ths		REMARKS	
	Forward				4778.03			
40	Nw ¼ ne ¼ & nw ¼	35	52	18	200	Swamp	Patented	Oct. 22/80
41	Lots 3-4-s ½ nw ¼ & ne ¼ sw ¼	3	48	19	204.56	"	"	Oct. 12/80
42	Nw ¼ sw ¼	"	"	"	40	"	"	"
43	S ½ sw ¼	"	"	"	80	"	"	"
44	W ½ ne ¼	5	"	"	82.30	"	"	"
45	Nw ¼	"	"	"	165.57	"	"	"
46	N ½ sw ¼	"	"	"	80	"	"	"
47	Se ¼ ne ¼	"	"	"	40	"	"	"
48	Se ¼ sw ¼ & se ¼	"	"	"	200	"	"	"
49	Se ¼ se ¼	7	"	"	40	"	"	"
50	N ½ ne ¼ & se ¼ ne ¼	9	"	"	120	"	"	"
51	Sw ¼ ne ¼ & n ½ nw ¼	"	"	"	120	"	"	"
52	S ½	"	"	"	320	"	"	"
53	S ½ nw ¼	"	"	"	80	"	"	"
54	Lots 1-2 & sw ¼ ne ¼	11	"	"	108.50	"	"	"
55	Nw ¼ ne ¼ & ne ¼ nw ¼	"	"	"	80	"	"	"
56	E ½ ne ¼-sw ¼ ne ¼-e ½ se ¼ & s ½ sw ¼	17	"	"	277	"	"	"
57	Lots 6 & 7	19	"	"	105.28	"	"	"
58	Lots 8 & 9	"	"	"	107.84	"	"	"
59	Lot 5	"	"	"	41	"	"	"
60	Lots 2-3-4-e ½ nw ¼-e ½ sw ¼ & sw ¼ se ¼	"	"	"	278	"	"	"
61	Nw ¼ nw ¼	29	"	"	40	"	"	"
62	Frac'l nw ¼	31	"	"	183.47	"	"	"
63	Sw ¼ sw ¼	3	49	19	40	"	"	"
64	Lot 5 (or nw ¼ nw ¼)	"	"	"	40	Swamp		
65	Lot 6 (or ne ¼ nw ¼)	"	"	"	40	"		
66	Lot 1-sw ¼ nw ¼ & sw ¼ se ¼	5	"	"	136.29	"	Patented	Oct. 12/80
67	Sw ¼	"	"	"	160	"	"	"
68	Nw ¼ nw ¼ (or Lot 1)	7	"	"	45.27	"	"	"
69	S ½ se ¼	"	"	"	80	"	"	"
70	W ½ nw ¼ & W ½ sw ¼	9	"	"	160	"	"	"
71	Sw ¼ sw ¼	15	"	"	40	"	"	"
72	Nw ¼ & e ½ sw ¼	"	"	"	240	"	"	"
73	Nw ¼ ne ¼-nw ¼ & nw ¼ sw ¼	17	"	"	240	"	"	"
74	E ½ se ¼	21	"	"	80	"	"	"
75	Nw ¼ ne ¼	"	"	"	40	"	"	"
76	Sw ¼ sw ¼	"	"	"	40	"	"	"
77	E ½ nw ¼	"	"	"	80	"	"	"
78	Sw ¼ nw ¼ & nw ¼ sw ¼	"	"	"	80	"	"	"
	Forward				9313.11			

North of base line and West of 4th Principal Meridian. Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

	PART OF SECTION	Sec.	Town.	Range	AREA	REMARKS
					Acres 100ths	
		Forward			9307.74	
79	S ½ nw ¼-ne ¼ sw ¼ & se ¼ se ¼	7	53	13	160.13	In lieu of
80	Lot 2	9	“	“	33.84	“
81	S ½ ne ¼	11	“	“	80	“
82	E ½ sw ¼ & nw ¼ se ¼	“	“	“	120	“
83	Se ¼ se ¼	13	“	“	40	“
84	Sw ¼ ne ¼	25	“	“	40	“
85	Nw ¼ se ¼ & se ¼ se ¼	“	“	“	80	“
86	Lot 7	25	51	13	27	“
87	Sw ¼ nw ¼ & w ½ sw ¼	27	“	“	120	“
88	Lot 7-se ¼ ne ¼-se ¼ sw ¼ & sw ¼ se ¼	29	“	“	121.75	“
89	Lot 7 & sw ¼ ne ¼	31	“	“	78.50	“
90	N ½ ne ¼	35	“	“	80	“
91	Se ¼ ne ¼-se ¼ sw ¼ & sw ¼ se ¼	“	“	“	120	“
92	Ne ¼ nw ¼	1	52	14	42.04	“
93	Lot 1 & nw ¼ ne ¼	3	“	“	83.21	“
94	E ½ ne ¼-ne ¼ sw ¼ & w ½ sw ¼	5	“	“	201.55	“
95	N ½ ne ¼	7	“	“	80	“
96	Ne ¼ se ¼	“	“	“	40	“
97	Se ¼ se ¼	“	“	“	40	“
98	Lot 1	9	“	“	47.12	“
99	Nw ¼ nw ¼	“	“	“	40	“
100	Nw ¼ sw ¼	“	“	“	40	“
101	Nw ¼ ne ¼	13	“	“	40	“
102	Ne ¼ nw ¼	“	“	“	40	“
103	Nw ¼ ne ¼	15	“	“	40	“
104	Sw ¼ ne ¼	“	“	“	40	“
105	Se ¼ ne ¼	“	“	“	40	“
106	Lot 5 & se ¼ nw ¼	17	“	“	41.34	“
107	Ne ¼ nw ¼	“	“	“	40	“
108	Nw ¼ nw ¼	“	“	“	40	“
109	Sw ¼ nw ¼	“	“	“	40	“
110	Sw ¼ ne ¼	3	53	14	40	“
111	Se ¼ ne ¼	“	“	“	40	“
112	Ne ¼ ne ¼	“	“	“	32.39	“
113	Nw ¼ ne ¼	“	“	“	32.44	“
114	Ne ¼ nw ¼	“	“	“	32.49	“
115	Nw ¼ nw ¼	“	“	“	32.54	“
116	Sw ¼ nw ¼	“	“	“	40	“
117	Se ¼ nw ¼	“	“	“	40	“
		Forward			11674.08	

441 North of base line and West of 4th Principal Meridian. Tracts within Twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA Acres	AREA 100ths	REMARKS
	Forward				9313	11	
79	Nw ¼	27	49	19	160		Swamp Patented Oct. 12/80
80	Ne ¼ sw ¼	"	"	"	40		" " "
81	W ½ sw ¼	"	"	"	80		" " "
82	N ½ ne ¼ & ne ¼ nw ¼	29	"	"	120		" " "
83	Nw ¼ nw ¼	"	"	"	40		" " "
84	Nw ¼ sw ¼	"	"	"	40		" " "
85	N ½ ne ¼	31	"	"	80		" " "
86	Se ¼ ne ¼	"	"	"	40		" " "
87	Sw ¼ ne ¼ & e ½ nw ¼	"	"	"	120		" " "
88	Lot 4 & e ½ sw ¼	"	"	"	127	43	" " "
89	N ½ se ¼	"	"	"	80		" " "
90	S ½ se ¼	"	"	"	80		" " "
91	N ½ ne ¼ & se ¼ ne ¼	33	"	"	120		" " "
92	Sw ¼ ne ¼	"	"	"	40		" " "
93	E ½ nw ¼	"	"	"	80		" " "
94	Nw ¼ nw ¼- nw ¼ sw ¼-e ½ sw ¼ & nw ¼ se ¼	"	"	"	200		" " "
95	S ½ se ¼	"	"	"	80		" " "
96	Sw ¼ se ¼	5	50	19	40		Swamp
97	Lot 4	7	"	"	32	52	"
98	Ne ¼ sw ¼	"	"	"	40		"
99	Se ¼ sw ¼	"	"	"	40		"
100	Sw ¼ se ¼	"	"	"	40		"
101	Se ¼ se ¼	"	"	"	40		"
102	Ne ¼ se ¼	"	"	"	40		"
103	Se ¼ sw ¼	9	"	"	40		"
104	Sw ¼ se ¼	"	"	"	40		"
105	Ne ¼ nw ¼	17	"	"	40		"
106	Sw ¼ sw ¼	"	"	"	40		"
107	Ne ¼ ne ¼	19	"	"	40		"
108	Se ¼ se ¼	"	"	"	40		"
109	Nw ¼ nw ¼	23	"	"	40		"
110	Sw ¼ sw ¼	29	"	"	40		"
111	Ne ¼ se ¼	"	"	"	40		"
112	Lot 1	31	"	"	33	72	"
113	Lot 2	"	"	"	34	37	"
114	Lot 3	"	"	"	35	02	"
115	Lot 4	"	"	"	35	67	"
116	Ne ¼ ne ¼	"	"	"	40		"
117	Nw ¼ ne ¼	"	"	"	40		"
	Forward				11691	84	

North of base line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

	PART OF SECTION	Sec.	Town.	Rang.	AREA Acres 100ths	REMARKS
		Forward			11674.08	
118	Ne ¼ sw ¼	3	53	14	40	In lieu of
119	Nw ¼ sw ¼	"	"	"	40	"
120	sw ¼ sw ¼	"	"	"	40	"
121	Se ¼ sw ¼	"	"	"	40	"
122	Ne ¼ ne ¼	5	"	"	31.10	"
123	Nw ¼ ne ¼	"	"	"	30.90	"
124	Sw ¼ ne ¼	"	"	"	40	"
125	Se ¼ ne ¼	"	"	"	40	"
126	Ne ¼ nw ¼	"	"	"	30.70	"
127	Nw ¼ nw ¼	"	"	"	30.50	"
128	Sw ¼ nw ¼	"	"	"	40	"
129	Se ¼ nw ¼	"	"	"	40	"
130	Ne ¼ sw ¼	"	"	"	40	"
131	Nw ¼ sw ¼	"	"	"	40	"
132	Se ¼ sw ¼	"	"	"	40	"
133	Ne ¼ se ¼	"	"	"	40	"
134	Nw ¼ se ¼	"	"	"	40	"
135	Sw ¼ se ¼	"	"	"	40	"
136	Se ¼ se ¼	"	"	"	40	"
137	Nw ¼ ne ¼	7	"	"	40	"
138	Sw ¼ ne ¼	"	"	"	40	"
139	Se ¼ ne ¼	"	"	"	40	"
140	Nw ¼ nw ¼	"	"	"	42.99	"
141	Sw ¼ nw ¼	"	"	"	42.98	"
142	Ne ¼ ne ¼	9	"	"	40	"
143	Nw ¼ ne ¼	"	"	"	40	"
144	Ne ¼ nw ¼	"	"	"	40	"
145	Nw ¼ nw ¼	"	"	"	40	"
146	Ne ¼ sw ¼	"	"	"	40	"
147	Nw ¼ sw ¼	"	"	"	40	"
148	Sw ¼ sw ¼	"	"	"	40	"
149	Se ¼ sw ¼	"	"	"	40	"
150	Ne ¼ se ¼	"	"	"	40	"
151	Nw ¼ se ¼	"	"	"	40	"
152	Sw ¼ se ¼	"	"	"	40	"
153	Ne ¼ nw ¼	15	"	"	40	"
154	Sw ¼ nw ¼	"	"	"	40	"
155	Se ¼ nw ¼	"	"	"	40	"
156	Ne ¼ ne ¼	17	"	"	40	"
		Forward			13203.25	

442 North of base line and West of 4th Principal Meridian.

Tracts within Twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town	Range	AREA Acres	AREA 10ths	REMARKS
	Forward				11691.84		
118	Sw ¼ ne ¼	31	50	19	40		Swamp
119	Se ¼ ne ¼	"	"	"	40		"
120	Ne ¼ nw ¼	"	"	"	40		"
121	Se ¼ nw ¼	"	"	"	40		"
122	Ne ¼ sw ¼	"	"	"	40		"
123	Se ¼ sw ¼	"	"	"	40		"
124	Ne ¼ se ¼	"	"	"	40		"
125	Nw ¼ se ¼	"	"	"	40		"
126	Sw ¼ se ¼	"	"	"	40		"
127	Se ¼ se ¼	"	"	"	40		"
128	Ne ¼ ne ¼	33	"	"	40		"
129	Nw ¼ ne ¼	"	"	"	40		"
130	Sw ¼ ne ¼	"	"	"	40		"
131	Se ¼ ne ¼	"	"	"	40		"
132	Ne ¼ nw ¼	"	"	"	40		"
133	Nw ¼ nw ¼	"	"	"	40		"
134	Sw ¼ nw ¼	"	"	"	40		"
135	Se ¼ nw ¼	"	"	"	40		"
136	Ne ¼ sw ¼	"	"	"	40		"
137	Nw ¼ sw ¼	"	"	"	40		"
138	Sw ¼ sw ¼	"	"	"	40		"
139	Se ¼ sw ¼	"	"	"	40		"
140	Ne ¼ se ¼	"	"	"	40		"
141	Nw ¼ se ¼	"	"	"	40		"
142	Sw ¼ se ¼	"	"	"	40		"
143	Se ¼ se ¼	"	"	"	40		"
144	Lot 1	1	51	19	39.38		"
145	Lot 2	"	"	"	38.14		"
146	Sw ¼ ne ¼	"	"	"	40		"
147	Se ¼ ne ¼	"	"	"	40		"
148	Lot 3	"	"	"	36.90		"
149	Lot 4	"	"	"	35.66		"
150	Sw ¼ nw ¼	"	"	"	40		"
151	Se ¼ nw ¼	"	"	"	40		"
152	Ne ¼ sw ¼	"	"	"	40		"
153	Nw ¼ sw ¼	"	"	"	40		"
154	Sw ¼ sw ¼	"	"	"	40		"
155	Se ¼ sw ¼	"	"	"	40		"
156	Ne ¼ se ¼	"	"	"	40		"
	Forward				13241.92		

North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

	PART OF SECTION	Sec.	Town.	Range	AREA Acres	AREA 100ths	REMARKS
		Forward			13203.25		
157	Nw ¼ ne ¼	17	53	14	40		In lieu of
158	Sw ¼ ne ¼	19	"	"	40		"
159	Nw¼ sw ¼	21	"	"	40		"
160	Nw ¼ ne ¼	29	"	"	40		"
161	Ne ¼ nw ¼	"	"	"	40		"
162	Se ¼ nw ¼	"	"	"	40		"
163	Ne ¼ sw ¼	"	"	"	40		"
164	Nw ¼ sw ¼	"	"	"	40		"
165	Ne ¼ ne ¼	31	"	"	40		"
166	Nw ¼ ne ¼	"	"	"	40		"
167	Sw ¼ ne ¼	"	"	"	40		"
168	Se ¼ ne ¼	"	"	"	40		"
169	Lots 5 & 6	33	"	"	48.94		"
170	Lot 7 & Island No. 1	"	"	"	29.16		"
171	Sw ¼ ne ¼	25	54	14	40		"
172	Se ¼ ne ¼	"	"	"	40		"
173	Sw ¼ nw ¼	"	"	"	40		"
174	Se ¼ nw ¼	"	"	"	40		"
175	Sw ¼ sw ¼	27	"	"	40		"
176	Nw ¼ ne ¼	31	"	"	40		"
177	Nw ¼ se ¼	"	"	"	40		"
178	Sw ¼ se ¼	"	"	"	40		"
179	Se ¼ se ¼	"	"	"	40		"
180	Nw ¼ se ¼	33	"	"	40		"
181	Sw ¼ se ¼	"	"	"	40		"
182	Se ¼ se ¼	"	"	"	40		"
183	Ne ¼ nw ¼	35	"	"	40		"
184	Nw ¼ nw ¼	"	"	"	40		"
185	Sw ¼ nw ¼	"	"	"	40		"
186	Se ¼ nw ¼	"	"	"	40		"
187	Ne ¼ sw ¼	"	"	"	40		"
188	Nw ¼ sw ¼	"	"	"	40		"
189	Sw ¼ sw ¼	"	"	"	40		"
190	Se ¼ sw ¼	"	"	"	40		"
191	Ne ¼ se ¼	"	"	"	40		"
192	Nw ¼ se ¼ & se ¼ se ¼	"	"	"	80		"
193	Lots 1 & 3	1	52	15	35.30		"
194	Lots 8 & 9	"	"	"	74.03		"
195	Sw ¼ nw ¼ & se ¼ se ¼	3	"	"	80		"
		Forward			14870.68		

443 North of Base Line and West of 4th Principal Meridian.

Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA			REMARKS
					Acres	100ths		
	Forward				13241	92		
157	Nw ¼ se ¼	1	51	19	40		Swamp	
158	Sw ¼ se ¼	"	"	"	40		"	
159	Se ¼ se ¼	"	"	"	40		"	
160	Lot 1	3	"	"	36	14	"	
161	Lot 2	"	"	"	36	58	"	
162	Sw ¼ ne ¼	"	"	"	40		"	
163	Se ¼ ne ¼	"	"	"	40		"	
164	Lot 3	"	"	"	37	02	"	
165	Lot 4	"	"	"	37	46	"	
166	Sw ¼ nw ¼	"	"	"	40		"	
167	Se ¼ nw ¼	"	"	"	40		"	
168	Ne ¼ sw ¼	"	"	"	40		"	
169	Nw ¼ sw ¼	"	"	"	40		"	
170	Sw ¼ sw ¼	"	"	"	40		"	
171	Se ¼ sw ¼	"	"	"	40		"	
172	Ne ¼ se ¼	"	"	"	40		"	
173	Nw ¼ se ¼	"	"	"	40		"	
174	Sw ¼ se ¼	"	"	"	40		"	
175	Se ¼ se ¼	"	"	"	40		"	
176	Lot 1	5	"	"	43	38	"	
177	Lot 2	"	"	"	43	26	"	
178	Sw ¼ ne ¼	"	"	"	40		"	
179	Se ¼ ne ¼	"	"	"	40		"	
180	Lot 3	"	"	"	43	14	"	
181	Lot 4	"	"	"	43	02	"	
182	Sw ¼ nw ¼	"	"	"	40		"	
183	Se ¼ nw ¼	"	"	"	40		"	
184	Ne ¼ sw ¼	"	"	"	40		"	
185	Nw ¼ sw ¼	"	"	"	40		"	
186	Sw ¼ sw ¼	"	"	"	40		"	
187	Se ¼ sw ¼	"	"	"	40		"	
188	Ne ¼ se ¼	"	"	"	40		"	
189	Nw ¼ se ¼	"	"	"	40		"	
190	Sw ¼ se ¼	"	"	"	40		"	
191	Se ¼ se ¼	"	"	"	40		"	
192	N ½ ne ¼	7	"	"	80		"	Patented Oct. 30/90
193	Lot 1	"	"	"	34	98	"	"
194	Lots 2 & 3	"	"	"	69	46	"	"
195	S ½ ne ¼	"	"	"	80		"	"
	Forward				14906	36		

North of Base Line and West of 4th Principal Meridian.
Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

					AREA		
	PART OF SECTION	Sec.	Town.	Range	Acres	100ths	REMARKS
		Forward			14870	68	
196	Nw ¼ ne ¼ & ne ¼ nw ¼	7	52	15	80		In lieu of
197	S ½ nw ¼ & nw ¼ se ¼	"	"	"	117	09	"
198	Sw ¼ ne ¼	9	"	"	40		"
199	Lots 6 & 7	11	"	"	56	51	"
200	W ½ ne ¼ & se ¼	13	"	"	240		"
201	Se ¼ ne ¼	17	"	"	40		"
202	Lots 1-2-3-4 & 7	"	"	"	180	87	"
203	W ½ ne ¼ & e ½ nw ¼	"	"	"	160		"
204	Lots 2-3-6-7 & 8	19	"	"	176	48	"
205	Se ¼ ne ¼ & se ¼ nw ¼	23	"	"	80		"
206	Sw ¼ sw ¼	"	"	"	40		"
207	W ½ nw ¼	27	"	"	80		"
208	Se ¼ nw ¼	"	"	"	40		"
209	Lot 2 & e ½ nw ¼	29	"	"	120	36	"
210	Lot 2-n ½ ne ¼-nw ¼ & sw ¼ sw ¼	31	"	"	309	03	"
211	Sw ¼ ne ¼	1	53	15	40		"
212	N ½ sw ¼	"	"	"	80		"
213	Nw ¼ ne ¼	"	"	"	30	01	"
214	E ½ nw ¼	"	"	"	70	55	"
215	Ne ¼ ne ¼	"	"	"	29	47	"
216	Sw ¼ ne ¼	3	"	"	40		"
217	Se ¼ ne ¼ n ½ se ¼	"	"	"	120		"
218	Se ¼ ne ¼	5	"	"	40		"
219	Sw ¼ sw ¼	7	"	"	38	81	"
220	Nw ¼ sw ¼	"	"	"	39	08	"
221	Nw ¼	"	"	"	158	99	"
222	Se ¼ ne ¼ w ½ ne ¼ & se ¼	"	"	"	280		"
223	Ne ¼ sw ¼	"	"	"	40		"
224	Se ¼ sw ¼	"	"	"	40		"
225	Se ¼ ne ¼	11	"	"	40		"
226	Ne ¼ nw ¼	"	"	"	40		"
227	Se ¼ sw ¼	"	"	"	40		"
228	N ½ se ¼	"	"	"	80		"
229	Lot 1	13	"	"	29	51	"
230	S ½ sw ¼ & w ½ se ¼	17	"	"	160		"
231	Ne ¼ se ¼	"	"	"	40		"
232	Nw ¼ nw ¼-n ½ sw ¼ & sw ¼ sw ¼	19	"	"	153	19	"
233	Ne ¼ ne ¼-sw ¼ ne ¼ & se ¼ sw ¼	"	"	"	120		"
234	N ½ ne ¼ & sw ¼ ne ¼	21	"	"	120		"
		Forward			18500	63	

444 North of Base Line and West of 4th Principal Meridian. Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
					Acres	100ths	
	Forward				14906	.36	
196	E ½ nw ¼	7	51	19	80		Swamp Patented Oct. 30/90
197	N ½ sw ¼ & se ¼ sw ¼	9	"	"	120		" " "
198	Ne ¼ ne ¼	"	"	"	40		" " "
199	Se ¼ ne ¼	"	"	"	40		" " "
200	Se ¼-sw ¼ ne ¼ & se ¼ nw ¼	"	"	"	240		" " "
201	Sw ¼ nw ¼	"	"	"	40		" " "
202	Ne ¼	11	"	"	160		" " "
203	Nw ¼	"	"	"	160		" " "
204	Sw ¼	"	"	"	160		" " "
205	N ½ se ¼	"	"	"	80		" " "
206	Se ¼ ne ¼	13	"	"	40		" " "
207	Ne ¼ nw ¼ & sw ¼ sw ¼	"	"	"	80		" " "
208	Nw ¼ ne ¼	15	"	"	40		" " "
209	Sw ¼ ne ¼ & w ½ se ¼	"	"	"	120		" " "
210	W ½	"	"	"	320		" " "
211	Se ¼ se ¼	"	"	"	40		" " "
212	Se ¼ ne ¼ & ne ¼ se ¼	17	"	"	80		" " "
213	Lot 3	19	"	"	34	.31	" " "
214	N ½ ne ¼	21	"	"	80		" " "
215	Lot 4 outside Fond du Lac Reserve	25	"	"	20	.25	" " "
216	Lots 1 & 2 outside Fond du Lac Reserve	27	"	"	43	.55	" " "
217	Nw ¼ sw ¼ & s ½ sw ¼	33	"	"	120		" " "
218	Sw ¼ se ¼	"	"	"	40		" " "
219	Se ¼ se ¼	"	"	"	40		" " "
220	Lot 1	31	"	"	34	.35	" " "
221	Se ¼	25	52	19	160		" " "
222	Sw ¼ nw ¼-n ½ sw ¼ & se ¼	29	"	"	280		" " "
223	Se ¼ sw ¼	"	"	"	40		" " "
224	Ne ¼ ne ¼	31	"	"	40		"
225	W ¼ ne ¼	"	"	"	40		"
226	Sw ¼ ne ¼	"	"	"	40		"
227	Se ¼ ne ¼	"	"	"	40		"
228	E ½ sw ¼	"	"	"	80		" Patented Oct. 30/90
229	Lot 4	"	"	"	34	.18	" " "
230	Lots 1-2 & e ½ nw ¼	"	"	"	153	.53	" " "
231	Lot 3	"	"	"	35	.21	" " "
232	Se ¼	"	"	"	160		" " "
233	N ½ ne ¼ & ne ¼ nw ¼	33	"	"	120		" " "
234	S ½ nw ¼ & nw ¼ nw ¼	"	"	"	120		" " "
	Forward				**18501**	**.74**	

North of Base Line and West of 4th Principal Meridian.
Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

	PART OF SECTION	Sec.	Town.	Range	AREA Acres 100ths	REMARKS
	Forward				18500.63	
235	Se ¼ nw ¼-n ½ sw ¼-nw ¼ se ¼ & se ¼ se ¼	21	53	15	200	In lieu of
236	Se ¼ ne ¼	23	–	–	40	–
237	Se ¼ sw ¼	25	–	–	40	–
238	Se ¼ ne ¼ & se ¼ sw ¼	27	–	–	80	–
239	Ne ¼ & nw ¼ se ¼	29	–	–	200	–
240	Sw ¼ nw ¼	–	–	–	40	–
241	Se ¼ nw ¼	–	–	–	40	–
242	N ½ sw ¼	–	–	–	80	–
243	Sw ¼ sw ¼	–	–	–	40	–
244	Ne ¼ ne ¼	31	–	–	40	–
245	Nw ¼ sw ¼	–	–	–	36.17	–
246	Se ¼ nw ¼ & ne ¼ sw ¼	–	–	–	80	–
247	E ½ ne ¼ & sw ¼ nw ¼	33	–	–	120	–
248	W ½ ne ¼ & se ¼ nw ¼	35	–	–	120	–
249	W ½ nw ¼ & e ½ sw ¼	–	–	–	158.54	–
250	Sw ¼ se ¼	–	–	–	38.77	–
251	Nw ¼ sw ¼	35	54	15	40	–
252	Lot 2-sw ¼ ne ¼ & s ½ nw ¼	1	52	16	158.65	–
253	E ½ sw ¼	–	–	–	80	–
254	Se ¼ ne ¼	3	–	–	40	–
255	Se ¼ ne ¼	5	–	–	40	–
256	Nw ¼ se ¼	–	–	–	40	–
257	W ½ ne ¼ & ne ¼ nw ¼	9	–	–	120	–
258	Se ¼ nw ¼	–	–	–	40	–
259	Ne ¼ ne ¼	11	–	–	40	–
260	W ½ ne ¼-e ½ nw ¼ & sw ¼ nw ¼	–	–	–	200	–
261	W ½ sw ¼-se ¼ sw ¼ & ne ¼ se ¼	–	–	–	160	–
262	Sw ¼ ne ¼	13	–	–	40	–
263	Nw ¼ se ¼	–	–	–	40	–
264	Sw ¼ se ¼	–	–	–	40	–
265	Lots 1-2 & 3	–	–	–	128.10	–
266	E ½ sw ¼ & sw ¼ sw ¼	–	–	–	120	–
267	Lots 1-2 & ne ¼ se ¼	15	–	–	95.45	–
268	Nw ¼ se ¼	–	–	–	40	–
269	Ne ¼ sw ¼	–	–	–	40	–
270	Nw ¼ ne ¼	–	–	–	40	–
271	E ½ ne ¼	–	–	–	80	–
272	Lots 1-3 & w ½ se ¼	23	–	–	150.70	–
273	Nw ¼ nw ¼	–	–	–	40	–
	Forward				**21667.01**	

445 North of Base Line and West of 4th Principal Meridian.

Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
					Acres	100ths	
	Forward				18501	74	
235	Sw ¼ & nw ¼ se ¼	33	52	19	200		Swamp Patented Oct. 30/90
236	Sw ¼ se ¼	"	"	"	40		" " "
237	Ne ¼ ne ¼	35	"	"	40		" " "
238	S ½ sw ¼	"	"	"	80		" " "
239	Se ¼ ne ¼ & se ¼	"	"	"	200		" " "
240	Sw ¼ nw ¼	5	46	20	40		Swamp Patented.
241	Lot 4	7	"	"	22	30	" "
242	W ½ sw ¼	17	"	"	80		" "
243	Sw ¼ se ¼	19	"	"	40		" "
244	Ne ¼ se ¼	"	"	"	40		" "
245	Sw ¼ nw ¼ (or Lot 6)	1	47	20	39	60	" " Oct. 12/80
246	S ½ nw ¼	3	"	"	80		" " "
247	Lot 1 & W ½ sw ¼	"	"	"	120	85	" " "
248	Lots 1-2-4 & se ¼ se ¼	7	"	"	132	16	" "
249	N ½ ne ¼-nw ¼ sw ¼ & se ¼ se ¼	9	"	"	160		" "
250	Ne ¼ ne ¼	11	"	"	40		" " "
251	Sw ¼ sw ¼	"	"	"	40		" " "
252	Nw ¼ ne ¼-ne ¼ nw ¼ & s ½ sw ¼	15	"	"	160		" " "
253	Nw ¼ nw ¼ & sw ¼ se ¼	17	"	"	80		" " "
254	Lots 2 & 3	19	"	"	57	92	" " "
255	Se ¼ sw ¼	"	"	"	40		" " "
256	Ne ¼ ne ¼	21	"	"	40		" " "
257	Se ¼ ne ¼ & e ½ se ¼	"	"	"	120		" " "
258	Nw ¼ sw ¼	29	"	"	40		Swamp
259	Sw ¼ sw ¼	"	"	"	40		"
260	Se ¼ ne ¼-w ½ ne ¼ & e ½ nw ¼	31	"	"	200		" " Oct. 12/80
261	Sw ¼ nw ¼-w ½ sw ¼-ne ¼ sw ¼ & nw ¼ se ¼	"	"	"	164	30	" " "
262	Ne ¼ se ¼	"	"	"	40		" " "
263	Sw ¼ se ¼	"	"	"	40		Swamp
264	Se ¼ se ¼	"	"	"	40		"
265	Ne ¼ sw ¼ & w ½ sw ¼	1	48	20	120		" Patented Oct. 12/80
266	Se ¼ ne ¼ & s ½ nw ¼	"	"	"	120		" " "
267	Lots 3 & 4	"	"	"	83		" " "
268	Lot 1	"	"	"	40	25	" " "
269	Lot 2	"	"	"	40	75	Swamp
270	Sw ¼ ne ¼	"	"	"	40		"
271	Lots 1 & 2	5	"	"	86	13	" Patented Oct. 12/80
272	Lot 3-se ¼ ne ¼ & e ½ se ¼	"	"	"	163	02	" " "
273	Ne ¼ se ¼	7	"	"	40		" " "
	Forward				21692	02	

North of Base Line and West of 4th Principal Meridian.
Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

					AREA		
	PART OF SECTION	Sec.	Town.	Range	Acres	100ths	REMARKS
		Forward			21667	.01	
274	Ne ¼ sw ¼	25	52	16	40		In lieu of
275	Lots 4-5-6-7-8-9-Se ¼ sw ¼ & w ½ se ¼	"	"	"	309	.15	"
276	Se ¼ se ¼	"	"	"	40		"
277	Ne ¼ ne ¼-sw ¼ ne ¼ & w ½ se ¼	7	53	16	160		"
278	Lot 2-se ¼ nw ¼ & e ½ sw ¼	"	"	"	158	.17	"
279	E ½ ne ¼-sw ¼ ne ¼ & se ¼ nw ¼	9	"	"	160		"
280	Sw ¼ nw ¼ & nw ¼ sw ¼	"	"	"	80		"
281	Ne ¼ sw ¼-s ½ sw ¼-w ½ se ¼ & ne ¼ se ¼	"	"	"	240		"
282	Se ¼ se ¼	"	"	"	40		"
283	Se ¼ ne ¼-nw ¼ se ¼-se ¼ sw ¼ & nw ¼ sw ¼	11	"	"	160		"
284	N ½ nw ¼	"	"	"	80		"
285	Ne ¼-e ½ nw ¼ & nw ¼ nw ¼	13	"	"	280		"
286	Ne ¼ sw ¼ & w ½ sw ¼	"	"	"	120		"
287	Se ¼ ne ¼-w ½ ne ¼ & e ½ nw ¼	15	"	"	200		"
288	W ½ nw ¼-n ½ sw ¼ & se ¼ sw ¼	"	"	"	200		"
289	W ½ se ¼ & ne ¼ se ¼	"	"	"	120		"
290	Ne ¼ ne ¼-sw ¼ nw ¼ & se ¼ nw ¼	17	"	"	120		"
291	Sw ¼ nw ¼-ne ¼ sw ¼ & s ½ sw ¼	"	"	"	160		"
292	N ½ se ¼	"	"	"	80		"
293	S ½ se ¼	"	"	"	80		"
294	Ne ¼ ne ¼ & s ½ ne ¼	19	"	"	120		"
295	Se ¼ sw ¼ & sw ¼ se ¼	"	"	"	80		"
296	N ½ se ¼ & se ¼ se ¼	"	"	"	120		"
297	Ne ¼ sw ¼	21	"	"	40		"
298	Ne ¼	"	"	"	160		"
299	N ½ se ¼	"	"	"	80		"
300	N ½ ne ¼ & sw ¼ ne ¼	23	"	"	120		"
301	Sw ¼ nw ¼	"	"	"	40		"
302	Sw ¼-sw ¼ se ¼ & E ½ se ¼	"	"	"	280		"
303	Nw ¼ nw ¼	25	"	"	40		"
304	Se ¼ sw ¼ & ne ¼ se ¼	"	"	"	80		"
305	Ne ¼	"	"	"	160		"
306	Nw ¼ nw ¼	27	"	"	40		"
307	W ½ ne ¼ & n½ se ¼	29	"	"	160		"
308	Nw ¼	"	"	"	160		"
309	N ½ sw ¼ & se ¼ sw ¼	"	"	"	120		"
310	Lot 1	31	"	"	34	.35	"
311	Lot 3 & ne ¼ sw ¼	"	"	"	75	.75	"
312	Lot 4	"	"	"	36	.45	"
		Forward			26440	.88	

446 North of Base Line and West of 4th Principal Meridian.

Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA Acres	100ths	REMARKS
	Forward				21692	02	
274	Sw ¼ sw ¼	9	48	20	40		Swamp Patented Oct. 12/80
275	Ne ¼-s ½ sw ¼ & sw ¼ se ¼	11	"	"	280		" " "
276	Se ¼ sw ¼	13	"	"	40		Swamp
277	W ½ ne ¼ & e ½ n v ¼	"	"	"	160		" Patented Oct. 12/80
278	Nw ¼ nw ¼-n ½ sw ¼ & sw ¼ sw ¼	"	"	"	160		" " "
279	Se ¼	"	"	"	160		" " "
280	Lot 1 & nw ¼ ne ¼	19	"	"	89	96	" " "
281	Ne ¼-ne ¼ nw ¼ & sw ¼ nw ¼	23	"	"	240		" " "
282	Ne ¼ nw ¼	25	"	"	40		" " "
283	Ne ¼	"	"	"	160		" " "
284	E ½ se ¼	"	"	"	80		" " "
285	Se ¼ nw ¼-sw ¼ & w ½ se ¼	"	"	"	280		" " "
286	W ½ se ¼ & se ¼ se ¼	27	"	"	120		" " "
287	Sw ¼ nw ¼ & sw ¼	"	"	"	200		" " "
288	Se ¼ ne ¼-w ½ ne ¼ & e ½ nw ¼	29	"	"	200		" " "
289	Nw ¼ sw ¼ & e ½ sw ¼	"	"	"	120		" " "
290	W ½ se ¼ & ne ¼ se ¼	"	"	"	120		" " "
291	Sw ¼ ne ¼-s ½ nw ¼ & ne ¼ sw ¼	33	"	"	160		" " "
292	W ½ sw ¼	"	"	"	80		" " "
293	E ½ ne ¼	35	"	"	80		" " "
294	Nw ¼ nw ¼ & s ½ sw ¼	"	"	"	120		" " "
295	S ½ se ¼	"	"	"	80		" " "
296	Lots 1-2 & 3	3	49	20	103	31	" " "
297	Se ¼ se ¼	"	"	"	40		" " "
298	Sw ¼	5	"	"	160		" " "
299	Lots 1 & 2	7	"	"	79	24	" " "
300	E ½ nw ¼ & ne ¼ sw ¼	"	"	"	120		" " "
301	Lot 3	"	"	"	40	70	" " "
302	Ne ¼-n ½ se ¼ & sw ¼ se ¼	"	"	"	280		" " "
303	Se ¼ se ¼	"	"	"	40		" " "
304	Sw ¼ sw ¼ & ne ¼ se ¼	9	"	"	80		" " "
305	Ne ¼	11	"	"	160		" " "
306	Ne ¼ nw ¼	"	"	"	40		" " "
307	Se ¼	"	"	"	160		" " "
308	Sw ¼	"	"	"	160		" " "
309	W ½ nw ¼ & se ¼ nw ¼	"	"	"	120		" " "
310	Ne ¼ ne ¼	13	"	"	40		" " "
311	W ½ ne ¼	"	"	"	80		" " "
312	Se ¼ ne ¼	"	"	"	40		" " "
	Forward				26445	23	

North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
					Acres	100ths	
	Forward				26440.88		
313	Se ¼ ne ¼- w ½ se ¼-se ¼ se ¼ & se ¼ sw ¼	31	53	16	200		In lieu of
314	Sw ¼ ne ¼ & se ¼ nw ¼	33	"	"	80		"
315	Sw ¼ nw ¼ & nw ¼ sw ¼	35	"	"	80		"
316	Se ¼ nw [—]	9	53	17	40		"
317	Ne ¼ & ne ¼ nw ¼	11	"	"	200		"
318	S ½ nw ¼	"	"	"	80		"
319	Sw ¼ se ¼ & e ½ se ¼	"	"	"	120		"
320	S ½ ne ¼ & se ¼ nw ¼	13	"	"	120		"
321	Ne ¼ sw ¼ & n ½ se ¼	"	"	"	120		"
322	Nw ¼ ne ¼	15	"	"	40		"
323	W ½ se ¼ & se ¼ se ¼	"	"	"	120		"
324	Se ¼ ne ¼	"	"	"	40		"
325	W ½ nw ¼-n ½ sw ¼-se ¼ sw ¼ & w ½ se ¼	25	"	"	280		"
326	E ½ se ¼	"	"	"	80		"
		Total			28040.88		

447 North of Base Line and West of 4th Principal Meridian.

Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA Acres	AREA 100ths	REMARKS
	Forward				26445.23		
313	Se ¼ & se ¼ sw ¼	13	49	20	200		Swamp Patented Oct. 12/80
314	N ½ sw ¼	"	"	"	80		" " "
315	S ½ nw ¼	"	"	"	80		" " "
316	Ne ¼ nw ¼	"	"	"	40		" " "
317	E ½ ne ¼-sw ¼ ne ¼ & Lots 1 & 2 •	21	"	"	209.70		" " "
318	W ½ sw ¼	"	"	"	80		" " "
319	E ½ sw ¼ & sw ¼ se ¼	"	"	"	120		" " "
320	N ½ se ¼ & se ¼ se ¼	"	"	"	120		" " "
321	N ½ nw ¼ & nw ¼ sw ¼	23	"	"	120		" " "
322	Sw ¼ sw ¼	"	"	"	40		" " "
323	N ½ nw ¼ & sw ¼ nw ¼	27	"	"	120		" " "
324	Se ¼ se ¼	29	"	"	40		" " "
325	Ne ¼-n ½ nw ¼ & nw ¼ sw ¼	"	"	"	280		" " "
326	W ½ nw ¼	35	"	"	80		" " "
	Total				28054.93		

448 COMPLAINANTS' EXHIBIT No. 22.—Being Northern Pacific Selection List No. 15, dated Oct. 18, 1883. Offered in evidence at page 211, this record.

449 N. P. R. R.

~~Original & Losses.~~

~~Filed Oct. 17th, 1883.~~ ~~Approved Oct. 17th, 1883.~~

Selection List No. 15.

Duluth District

Land Department
NORTHERN PACIFIC RAILROAD CO.
LIST No. 15 (2ND INDEMNITY)
of selections of public lands made by the
NORTHERN PACIFIC RAILROAD COMPANY
as enuring to it under grants of July 2, 1864,
and May 31, 1870, in the
Duluth U. S. Land District,
Minnesota.

Entered on plants and Tract Books Oct. 18 1883.

J. R. CAREY, Register.
Miller

Triplicate

450 Land Department Northern Pacific Railroad Company.

List No. 15 (2nd Indemnity).

State of Minnesota, U. S. Land Office, at Duluth.

Oct. 17th, 1883.

The Northern Pacific Railroad Company, under and by virtue of the acts of Congress, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the northern route," approved July 2nd, 1864, and "A resolution authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road, and to secure the same by mortgage, and for other purposes," approved May 31st, 1870, and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said company, as enuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said act of Congress and the location of the line of route of the railroad of the said Company; being for a section of .... miles of the same, commencing at .... and ending .... The selection being particularly described as follows, to wit:

North of Base Line and West of 4th Principal Meridian.
Northern Pacific Railroad.
List of Selections made at U. S. Land Office, Duluth, Minn.

PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
				Acres	100ths	
Ne ¼ se ¼ & s ½ se ¼	5	54	10	120		
Sw ¼ se ¼	7	“	“	40		
Se ¼ ne ¼, nw ¼ nw ¼ & nw ¼ sw ¼	9	“	“	120		
Se ¼ sw ¼ & w ½ se ¼	9	“	“	120		
Ne ¼ sw ¼	13	“	“	40		
S ½ se ¼	15	“	“	80		
Sw ¼ ne ¼	17	“	“	40		
Se ¼ sw ¼ & sw ¼ se ¼	19	“	“	80		
Sw ¼ nw ¼	31	“	“	42.57		
Ne ¼, e ½ nw ¼ & s ½	27	“	“	560		
Sw ¼ ne ¼, s ½ nw ¼, e ½ sw ¼ & se ¼	29	“	“	360		
Se ¼ ne ¼, E ½ sw ¼ & se ¼	31	“	“	280		
E ½ ne ¼, sw ¼ ne ¼ & n ½ nw ¼	33	“	“	480		
Sw ¼ nw ¼, e ½ sw ¼ & se ¼	33	“	“			
Nw ¼ ne ¼, n ½ nw ¼ & sw ¼ nw ¼	35	“	“	160		
Nw ¼ sw ¼ & se ¼ sw ¼	35	“	“	80		
N ½ ne ¼	31	55	10	80		
Sw ¼ ne ¼	3	53	11	40		
Nw ¼	5	“	“	157.11		
Sw ¼ se ¼	1	54	11	40		
N ½ ne ¼, nw ¼ & w ½ sw ¼	3	“	“	315.60		
Whole	5	“	“	443.37		
Nw ¼ sw ¼, se ¼ sw ¼ & s ½ se ¼	7	“	“	162.32		
W ½ of e ½, se ¼ nw ¼, w ½ sw ¼ & ne ¼ sw ¼	9	“	“	320		
W [—] of e ½, nw ¼ & n ½ sw ¼	11	“	“	400		
Sw ¼ ne ¼ & se ¼ nw ¼	15	“	“	80		
W ½ ne ¼, nw ¼ & n ½ sw ¼	17	“	“	320		
Nw ¼ & n ½ sw ¼ & sw ¼ sw ¼	19	“	“	286.95		
S ½	31	“	“	323.91		
Se ¼ sw ¼	33	“	“	40		
S ½ n ½, sw ¼ & n ½ se ¼	17	55	11	400		
N ½, sw ¼, nw ¼ se ¼ & se ¼ se ¼	19	“	“	559.06		
Sw ¼ nw ¼, nw ¼ sw ¼ & se ¼ se ¼	21	“	“	120		
E ½ sw ¼	23	“	“	80		
Nw ¼ nw ¼	25	“	“	40		
Whole	27	“	“	640		
W ½ ne ¼, e ½ nw ¼ & s ½	29	“	“	480		
Whole	31	“	“	644.15		
Whole	33	“	“	640		
E ½ sw ¼	35	“	“	80		
E ½ ne ¼, nw ¼ ne ¼ & ne ¼ nw ¼	1	53	12	159.43		
Whole	1	54	12	649.20		
Forward				10103.67		

451 North of Base Line and West of 4th Principal Meridian. Tracts within Twenty Miles of the Line of said Railroad in lieu of which the selected tracts are taken.

PART OF SECTION	Sec.	Town.	Range	AREA Acres	100ths	REMARKS
Whole	19	44	29	645.38		
Se ¼ ne ¼ & nw ¼ ne ¼, n ½ nw ¼ se ¼ sw ¼ & s ½ se ¼	21	"	"	280		
Nw ¼ & nw ¼ sw ¼	25	"	"	200		
Se ¼ ne ¼, w ½ ne ¼, w ½ & se ¼	27	"	"	600		
N ½ & sw ¼	29	"	"	480		
Whole	31	"	"	643.80		
Se ¼ ne ¼, nese ¼, w ½ of e ½ & w ½	33	"	"	560		
S ½	35	"	"	320		
Ne ¼ nw ¼ & n ½ ne ¼	3	41	30	147.77		
Ne ¼, e ½ nw ¼, sw ¼, sw ¼ se ¼ & n½ se ¼	3	42	30	470.05		
Nw ¼ ne ¼ & n ½ nw ¼	1	"	"	90.93		
E ½ ne ¼, s ½ sw ¼, w ½ se ¼ & ne ¼ se ¼	11	"	"	280		
Sw ¼ sw ¼, se ¼ & se ¼ ne ¼	13	"	"	240		
Lot 1, w ½ ne ¼, nw ¼, e ½ sw ¼ & se ¼	15	"	"	515.15		
Whole	23	"	"	640		
Ne ¼, n ½ nw ¼, sw ¼, w ½ se ¼ & ne ¼ se ¼	25	"	"	520		
E ½ & e ½ of w ½	27	"	"	480		
E ½ ne ¼, sw ¼ ne ¼, nw ¼ & n ½ of s ½	35	"	"	440		
Whole	1	43	30	637.46		
S ½	3	"	"	320		
E ½ & e ½ of w ½	9	"	"	480		
Ne ¼ ne ¼, sw ¼ ne ¼, w ½ & se ¼	11	"	"	560		
E ½ ne ¼ n ½ nw ¼, s ½ sw ¼ & se ¼ se ¼	13	"	"	280		
N ½, w ½, sw ¼, ne ¼ sw ¼ & se ¼	15	"	"	600		
Ne ¼ ne ¼, w ½ ne ¼, w ½ & se ¼	21	"	"	600		
Whole	23	"	"	640		
N ½, sw ¼, n ½ se ¼ & se ¼ se ¼	25	"	"	600		
N ½, n ½ sw ¼, se ¼ sw ¼ & se ¼	27	"	"	600		
Ne ¼, w ½ se ¼ & ne ¼ se ¼	33	"	"	280		
Ne ¼, e ½ of w ½, nw ¼ nw ¼ & sw ¼ sw ¼ & nw ¼ se ¼	35	"	"	440		
W ½ ne ¼ & se ¼	21	44	30	240		
Fr'l whole	23	"	"	157.72		
Whole	25	"	"	640		
Fr'l whole	27	"	"	537.54		
E ½	33	"	"	320		
Nw ¼ ne ¼, ne ¼ nw ¼, s ½ of n ½ & s ½	35	"	"	560		
Forward......................				16045.80		

North of base line & west of 5th p. m.

North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of Selections made at U. S. Land Office, Duluth, Minn.

PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
				Acres	100ths	
	Forward			10103.67		
Lots 2, 3, 4, 5 & 7 & sw ¼ nw ¼	3	54	12	209.66		
S ½ nw ¼, n ½ sw ¼ & Lots 5-6-7-8-9	5	"	"	313.05		
Lots 3-4-7-8-9-10-11 ne ¼ sw ¼	7	"	"	298.64		
Nw ¼ ne ¼, & nw ¼	9	"	"	200		
N ½ ne ¼, sw ¼ ne ¼, w ½ se ¼ & se ¼ se ¼	11	"	"	240		
Whole	13	"	"	640		
Lots 1-2-3-4-5-6, nw ¼, sw ¼ sw ¼, e ½ sw ¼ & n ½ se ¼	15	"	"	558.45		
				12563.47		
Lot 2 se ¼ nw ¼, w ½ nw ¼ & n ½ sw ¼ se ¼ sw ¼ & se ¼	17	"	"	427.50		
Se ¼ ne ¼ Lots 1-2-5 se ¼ sw ¼ ne ¼ se ¼	19	"	"	252.83		
E ½ ne ¼, sw ¼ ne ¼, w ½ & se ¼	21	"	"	600		
E ½, e ½ of w ½, nw ¼ nw ¼ & sw ¼ sw ¼	23	"	"	560		
Whole	25	"	"	640		
E ½ & e ½ of w ½, sw ¼ sw ¼	27	"	"	520		
E ½ ne ¼, nw ¼ ne ¼, nw ¼ & nw ¼ sw ¼	29	"	"	320		
Sw ¼ ne ¼ & se ¼ nw ¼	33	"	"	80		
Ne ¼, e ½ nw ¼, sw ¼ nw ¼, n ½ of s ½ sw ¼ se ¼	35	"	"	480		
N ½, n ½ of s ½, sw ¼ sw ¼ se ¼ se ¼	7	55	12	579.60		
Lots 2-5-7-8, w ½ sw ¼ & sw ¼ se ¼	9	"	"	236.45		
N ½ se ¼ & e ½ sw ¼	11	"	"	160		
Se ¼ ne ¼, w ½ ne ¼, nw ¼ nw ¼ sw ¼ sw ¼, e ½ sw ¼ & se ¼	13	"	"	440		
Whole	15	"	"	640		
Ne ¼ ne ¼ Lots 4-5-7 e ½ sw ¼	17	"	"	311		
W ½ se ¼ & se ¼ se ¼	17	"	"	42.75		
Lots 3-6-11-12-13 se ¼ sw ¼	19	"	"	261.90		
Ne ¼, e ½ of w ½, nw ¼ nw ¼ & sw ¼ sw ¼ n ½ se ¼ & se ¼ se ¼	21	"	"	520		
N ½, Lot 1, e ½ sw ¼ & se ¼	23	"	"	598.60		
Lots 1-2-4-6-8, n ½ nw ¼ & nw ¼ sw ¼	27	"	"	277.45		
Ne ¼, e ½ nw ¼, sw ¼ nw ¼, nw ¼ se ¼, Lots 1 & 2	29	"	"	378.10		
N ½ ne ¼, Lot 5, e ½ sw ¼, w ½ se ¼ & se ¼ se ¼	31	"	"	324.45		
Se ¼, se ¼ ne ¼, w ½ ne ¼ & Fr'l w ½	33	"	"	548.10		
Nw ¼, n ½ sw ¼, Lot 1 & se ¼	35	"	"	430.60		
Se ¼ nw ¼, ne ¼ sw ¼ & se ¼ se ¼	1	54	13	120		
S ½ sw ¼	3	"	"	80		
Se ¼ ne ¼	5	"	"	40		
Forward......................				22432.80		

452 North of Base Line and West of 4th Principal Meridian.

Tracts within Twenty Miles of the Line of said Railroad in lieu of which the selected tracts are taken.

PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
				Acres	100ths	
Forward				16045	.80	
Whole	3	130	31	631	.70	
Se ¼ ne ¼, n ½ nw ¼, sw ¼ nw ¼ sw ¼ se ¼ & e ½ se ¼	5	"	"	272	.32	
E ½ of e ½ Lots 1-2-3-4-5-6-7-8-9-10-11-14	7	"	"	604	.11	
Whole	9	"	"	640		
W ½ & se ¼	11	"	"	480		
W ½ of w ½	13	"	"	160		
Whole	15	"	"	640		
Whole	17	"	"	640		
"	19	"	"	903	.83	
"	21	"	"	640		
				21657	.76	
Whole	23	"	"	640		
"	27	"	"	640		
"	29	"	"	640		
N ½ ne ¼ Lots 1, 2 & 3	31	"	"	200		
N ½	33	"	"	320		
Nw ¼	35	"	"	160		
W ½	3	131	31	307	.63	
Whole	5	"	"	596	.44	
"	7	"	"	853	.03	
"	9	"	"	640		
"	15	"	"	640		
"	17	"	"	640		
"	19	"	"	854	.88	
"	21	"	"	640		
"	27	"	"	640		
"	29	"	"	640		
"	31	"	"	882	.60	
"	33	"	"	640		
W ½	35	"	"	320		
Whole	3	132	31	712	.35	
"	5	"	"	678	.82	
Fr'l whole	7	"	"	502	.41	
"	9	"	"	377	.92	
"	15	"	"	577	.62	
"	17	"	"	272	.93	
"	19	"	"	827	.99	
"	21	"	"	640		
Lots 2-3-4-5 sw ¼ sw ¼	27	"	"	145	.45	
Fr'l whole	29	"	"	141	.36	
Forward				37429	.19	

North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of Selections made at U. S. Land Office, Duluth, Minn.

PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
				Acres	100ths	
	Forward			22432.80		
S ½ nw ¼, nw ¼ sw ¼ & w ½ se ¼	9	54	13	200		
Ne ¼ se ¼	11	"	"	40		
Se ¼ sw ¼	13	"	"	40		
Nw ¼ ne ¼ & nw ¼ se ¼	15	"	"	80		
Nw ¼ nw ¼, se ¼ nw ¼, sw ¼ sw ¼	19	"	"	132.21		
Lots 3 & 7	21	"	"	49.10		
S ½ ne ¼ & ne ¼ nw ¼	23	"	"	120		
Lot 4 & s ½ ne ¼	25	"	"	89.50		
Se ¼ sw ¼	7	55	13	40		
N ½ & sw ¼, nw ¼ se ¼	9	"	"	520		
Se ¼ ne ¼, w ½ ne ¼ & e ½ nw ¼	11	"	"	200		
Sw ¼, nw ¼ se ¼ & se ¼ se ¼	11	"	"	240		
N ½ ne ¼, se ¼ nw ¼ & w ½ nw ¼	13	"	"	200		
N ½ sw ¼, se ¼ sw ¼ & sw ¼ se ¼	13	"	"	160		
Se ¼ nw ¼, w ½ nw ¼ & n ½ sw ¼	15	"	"	200		
Se ¼ sw ¼ & ne ¼ se ¼	15	"	"	80		
Ne ¼ ne ¼, sw ¼ ne ¼ & nw ¼	17	"	"	240		
				25063.61		
Nw ¼ ne ¼ & n ½ nw ¼	19	"	"	124.35		
Sw ¼ ne ¼, ne ¼ nw ¼ & n ½ se ¼	21	"	"	160		
Nw ¼ ne ¼, e ½ nw ¼, nw ¼ nw ¼ & n ½ sw ¼	23	"	"	240		
Se ¼ nw ¼	27	"	"	40		
Ne ¼ sw ¼	29	"	"	40		
E ½ se ¼	33	"	"	80		
Nw ¼ se ¼	35	"	"	40		
Sw ¼ nw ¼, sw ¼ sw ¼ & e ½ se ¼	3	54	14	160		
Sw ¼ ne ¼ & nw ¼ sw ¼	5	"	"	80		
Sw ¼ ne ¼ & sw ¼ se ¼	7	"	"	80		
Se ¼ ne ¼	9	"	"	40		
Se ¼ sw ¼	13	"	"	40		
Sw ¼ ne ¼	17	"	"	40		
Se ¼ ne ¼, nw ¼ ne ¼, Lots 1 & 2, se ¼ sw ¼ & ne ¼ se ¼	19	"	"	237.60		
Se ¼ se ¼	21	"	"	40		
Se ¼ nw ¼	23	"	"	40		
Nw ¼ ne ¼	25	"	"	40		
Ne ¼ se ¼	1	55	14	40		
E ½ sw ¼ & nw ¼ se ¼	5	"	"	120		
Sw ¼ ne ¼ & sw ¼ nw ¼	7	"	"	81.28		
Sw ¼ ne ¼ & se ¼ nw ¼	9	"	"	80		
Nw ¼ sw ¼	11	"	"	40		
	Forward			26946.84		

453 North of Base Line and West of 5th Principal Meridian. Tracts within Twenty Miles of the Line of said Railroad in lieu of which the selected tracts are taken.

PART OF SECTION	Sec.	Town.	Range	AREA Acres	AREA 100ths	REMARKS
Forward				37429	19	
Fr'l whole	31	132	31	674	04	
Fr'l "	33	"	"	505	52	
Se ¼ ne ¼, w ½ ne ¼, w ½ & se ¼	1	130	32	593	85	
N ½, sw ¼, w ½ se ¼ & ne ¼ se ¼	3	"	"	596	40	
Whole	5	"	"	643	75	
Ne ¼ ne ¼ Lots 5 & 8	7	"	"	82	78	
E ½, se ¼ nw ¼, w ½ nw ¼ & sw ¼	9	"	"	600		
N ½, e ½ sw ¼ & se ¼	11	"	"	560		
Ne ¼ ne ¼, w ½ ne ¼, w ½ & se ¼	13	"	"	600		
W ½, se ¼ se ¼ & w ½ se ¼	15	"	"	440		
W ½ ne ¼	15	"	"	80		
N ½ nw ¼ & Lot 7	33	131	32	127	89	
W ½ & w ½ ne ¼	35	"	"	40		
North of base line and west of 4th p. m.						
Se ¼ ne ¼ & se ¼ se ¼	7	45	22	80		
E ½ ne ¼	11	"	"	80		
Sw ¼ nw ¼	13	"	"	40		
Total..............				43533	42	

454 North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of Selections made at U. S. Land Office, Duluth, Minn.

PART OF SECTION	Sec.	Town.	Range	AREA Acres	 100ths	REMARKS
Forward				26946.84		
Nw ¼ ne ¼ & ne ¼ sw ¼	13	55	14	80		
Ne ¼ ne ¼, sw ¼ ne ¼, se ¼ nw ¼, sw ¼ & ne ¼ se ¼	15	"	"	320		
Nw ¼ ne ¼ & se ¼ nw¼	17	"	"	80		
Nw ¼ ne ¼, ne ¼ nw ¼, w ½ sw ¼ & ne ¼ sw ¼	21	"	"	200		
Lot 2	23	"	"	33.25		
Se ¼ nw ¼	25	"	"	40		
Se ¼ nw ¼	29	"	"	40		
Ne ¼ sw ¼ & n ½ se ¼	1	54	15	120		
W ½ ne ¼, e ½ nw ¼, sw ¼ nw ¼ & s ½	3	"	"	529.07		
Ne ¼, se ¼ nw ¼ & s ½	5	"	"	534.49		
Ne ¼, w ½ se ¼, Lots 5-6-7	7	"	"	318.55		
N ½, n ½ sw ¼, se ¼ sw ¼ & se ¼	9	"	"	600		
N ½ ne ¼, sw ¼ ne ¼, s ½ nw ¼, nw ¼ sw ¼ & se ¼ se ¼	11	"	"	280		
N ½ ne ¼, w ½ & s ½ se ¼	17	"	"	480		
N ½ ne ¼, n ½ sw ¼, nw ¼ se ¼ Lots 5-6-8-9-11	19	"	"	268.71		
N ½ ne ¼, sw ¼ ne ¼, sw ¼ sw ¼ e ½ sw ¼, w ½ se ¼, Lots 1-3-4-5	21	"	"	417.80		
Se ¼ ne ¼	23	"	"	40		
Ne ¼ ne ¼	25.	"	"	40		
S ½ nw ¼	27	"	"	80		
Sw ¼ sw ¼ & ne ¼ sw ¼	29	"	"	80		
Ne ¼ nw ¼ & sw ¼ sw ¼	31	"	"	81.97		
Sw ¼ se ¼	33	"	"	40		
Lots 5-6-7	15	55	15	115.20		
E ½ ne ¼, Lots 1 & 2 se ¼ sw ¼ & n ½ se ¼	17	"	"	260.63		
E ½ ne ¼, sw ¼ ne ¼ & se ¼ nw ¼ w ½ nw ¼, n ½ sw ¼ & se ¼	19	"	"	484.14		
N ½ ne ¼, sw ¼ ne ¼, s ½ nw ¼ & n ½ sw ¼	21	"	"	280		
Lots 2-3-4-6-8	21	"	"	121.39		
N ½ ne ¼, s ½ nw ¼ & nw ¼ sw ¼	23	"	"	200		
Sw ¼ nw ¼ & e ½ sw ¼	25	"	"	120		
Whole fr'l	27	"	"	421.75		
" "	29	"	"	620.63		
Lots 1-2-3-4-5-6, e ½ sw ¼ nw ¼ sw ¼, w ½ se ¼ & se ¼ se ¼	33	"	"	363.95		
Lots 7 & 8 & s ½ se ¼	31	"	"	126.27		
N ½, n ½ of s ½, se ¼ sw ¼ & sw ¼ se ¼	35	"	"	560		
Forward				**35324.64**		

455 North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of Selections made at U. S. Land Office, Duluth, Minn.

PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
				Acres	100ths	
Forward				35324	64	
E ½, s ½ nw ¼, nw ¼ sw ¼ & se ¼ sw ¼	1	53	16	477	83	
Ne ¼ ne ¼	3	"	"	44	24	
Lots 5-6 & ne ¼ se ¼	5	"	"	125		
Ne ¼ sw ¼	3	54	16	40		
Nw ¼ ne ¼, ne ¼ nw ¼ & w ½ nw ¼ nw ¼ sw ¼, Lots 4-5-6-7-9	7	"	"	300	70	
Lots 1-2-4 sw ¼ nw ¼ & sw ¼ se ¼	9	"	"	215	75	
Ne ¼, e ½ nw ¼, sw ¼ nw ¼ & n ½ se ¼	11	"	"	360		
Lots 1 & 2 & 6 ne ¼ nw ¼ & se ¼ se ¼	13	"	"	169	75	
Nw ¼ sw ¼ & s ½ sw ¼	15	"	"	120		
Se ¼ ne ¼ & sw ¼ sw ¼	17	"	"	80		
Se ¼ ne ¼ Lots 5-6-7-8	19	"	"	118	25	
Lots 2-3-6, se ¼ nw ¼ & w ½ sw ¼	21	"	"	214	75	
W ½ ne ¼, sw ¼ nw ¼, w ½ se ¼, se ¼ se ¼	23	"	"	240		
Ne ¼ ne ¼	25	"	"	40		
N ½ & w ½ se ¼	27	"	"	400		
Lots 1 & 2, se ¼ sw ¼	29	"	"	86	50	
E ½, se ¼ nw ¼ & e ½ sw ¼	33	"	"	440		
Se ¼ sw ¼ & se ¼	13	55	16	200		
N ½ of n ½, se ¼ nw ¼, sw ¼ ne ¼ sw ¼, n ½ se ¼ & se ¼ se ¼	19	"	"	501	96	
S ½ of n ½, nw ¼ nw ¼, n ½ sw ¼ Lots 1 & 2	21	"	"	337		
Ne ¼, e ½ of w ½, w ½ se ¼ & se ¼ se ¼	23	"	"	440		
Nw ¼ ne ¼ & n ½ nw ¼	25	"	"	120		
Ne ¼ ne ¼, w ½ ne ¼ & nw ¼	27	"	"	280		
Lots 1-2-3-4-5-6-7-8-9-10 se ¼ se ¼, sw ¼ sw ¼ & ne ¼ sw ¼	29	"	"	398	50	
W ½ of e ½ & ne ¼ nw ¼	31	"	"	200		
Lots 2 & 3 se ¼ nw ¼ & se ¼ se ¼	33	"	"	150	75	
Lots 3 & 6 & e ½ se ¼	35	"	"	135	50	
Se ¼	3	54	17	160		
Lots 2-5-6-7-8-9-10, se ¼ se ¼	11	"	"	290	25	
Fr'l e ½, Lots 4, 6 & 7 & n ½ sw ¼	13	"	"	496	75	
S ½ of n ½, ne ¼ sw ¼ & se ¼	23	55	17	360		
Ne ¼ & n ½ nw ¼	25	"	"	240		
N ½ ne ¼, sw ¼ ne ¼ & w ½	15	54	15	440		
Total............				43548	12	

456 State of Minn.
County of Ramsey—ss.

I, Chas. B. Lamborn, being duly sworn, depose and say, that I am the Land Commissioner of the Northern Pacific Railroad Company; that the foregoing list of lands, which I hereby select, is a correct list of a portion of the public lands claimed by the said Northern Pacific Railroad Company as enuring to said Company, to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the northern route, for which a grant of land was made by the Act of Congress approved July 2nd, 1864, and the Joint Resolution approved May 31st, 1870; that the said lands are vacant, unappropriated, and are not interdicted mineral or reserved lands, and are of the character contemplated by the grant, being within the limits of forty miles on each side of the line of route for a continuous distance of ...... miles, being a portion of the lands for a section of ...... miles of said railroad, commencing .... and ending ....

(Signed) CHAS. B. LAMBORN, (L. S.)

Sworn and subscribed before me this 15th day of October, 1883.
[Seal] GEO. W. BOARD,
Notary Public.

United States Land Office,
Duluth, Minn., Oct. 17th, 1883.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Northern Pacific Railroad Company, under the grant to the said company, by Act of Congress approved July 2nd, 1864, and Joint Resolution approved May 31st, 1870, and selected by said Northern Pacific Railroad Company by Chas. B. Lamborn, the duly authorized agent and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved and that the whole of said lands are surveyed public lands of the United States, and within the limits of forty miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or any other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress approved July 1st, 1864, and contemplated by the circular of instructions dated Jan. 24th, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices, and that the said company have paid to the undersigned, the Receiver the full sum of Five Hundred and Forty-four (544) Dollars, in full payment and discharge of said fees.

J. R. CAREY, Register,
W. W. SPALDING, Receiver.

457 COMPLAINANTS' EXHIBIT No. 23.—Being Northern Pacific Selection List No. 15B, dated April 11, 1893. Offered in evidence at page 211, this record.

458 Rearranged Indemnity Selection List
Selections and Losses
Tract for Tract.
Form L. D. 153

Filed .... 189 Approved 189

Land Department
Northern Pacific Railroad Co.
List No. 15B. (2nd Indemnity)
of selections of public lands made by the
NORTHERN PACIFIC RAILROAD COMPANY
as enuring to it under grants of July 2, 1864,
and May 31, 1870, in the
Duluth U. S. Land District.
Minnesota.

Filed U. S. Land Office, Duluth, Minn., April 11th, 1893.

Monroe Nichols, Register.

Duplicate transmitted
Aug. 28, 1894.

Posted on plats, and tract books as per F. March 22, 1897.

Reinstated on Office Records as per instructions contained in letter "F" dated May 26, 1900. (K)

459 Land Department Northern Pacific Railroad Company.
List No. 15B. (2nd Indemnity)
State of Minnesota, U. S. Land Office at Duluth.

Whereas, the Northern Pacific Railroad Company has heretofore to wit, on the 17th day of October, 1883, duly selected under the directions of the Secretary of the Interior, those certain tracts and parcels of land particularly set forth and described in Duluth, List No. 15 filed in the United States District Land Office at Duluth, Minnesota, on the seventeenth day of October, 1883, as indemnity for certain tracts and parcels of odd-numbered sections of land within the place limits of the grant to said railroad company, which said tracts were reserved, sold, granted, or otherwise appropriated, or not free from pre-emption or other claims or rights, at the time the line of its road was definitely located, in accordance with the provisions of the Act of Congress, approved July 2d, 1864; and of the Joint Resolution of Congress, approved May 31st, 1870; which lands so selected are on and within forty miles of the line of said road as so definitely located;

And whereas, the Secretary of the Interior has, since the filing of the above described list further directed that the said list shall be so rearranged so it shall indicate the specific loss in lieu of which each specific selection has been made;

Now, therefore, to comply with the further requirements of the Interior Department, but not waiving or abandoning any rights or claims heretofore acquired by virtue of its selections heretofore made under the directions of the Secretary of the Interior, the said Northern Pacific Railroad Company has herein designated the lands heretofore selected as indemnity in said Duluth List No. 15 and no other lands, and has herein set opposite each specific description of land so selected the description of the land lost from its grant in place, and in lieu of which such indemnity land is selected.

Signed CHAS. B. LAMBORN,
Land Commissioner,
Northern Pacific Railroad Company.

St. Paul, Minn., April 10th, 1893.

The Northern Pacific Railroad Company, under and by virtue of the act of Congress, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the northern route," approved July 2nd, 1864, and "A resolution authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road, and to secure the same by mortgage, and for other purposes," approved May 31st, 1870, and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by said company, as enuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Act of Congress and the location of the line of route of the railroad of the said Company; being for a section of .... miles of the same, commencing at .... and ending............. the selection being particularly described as follows, to wit:

North of Base Line and West of 4th Principal Meridian. Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
					Acres	100ths	
1	Ne ¼ se ¼ & s ½ se ¼	5	54	10	120		In lieu of
2	Sw ¼ se ¼	7	"	"	40		"
3	Se ¼ ne ¼ & nw ¼ nw ¼	9	"	"	80		"
4	Nw ¼ sw ¼ & se ¼ sw ¼	9	"	"	80		"
5	W ½ se ¼	9	"	"	80		"
6	Ne ¼ sw ¼	13	"	"	40		"
7	S ½ se ¼	15	"	"	80		"
8	Sw ¼ ne ¼	17	"	"	40		"
9	Se ¼ sw ¼ & sw ¼ se ¼	19	"	"	80		"
10	Sw ¼ nw ¼	31	"	"	42.57		"
11	N ½ sw ¼	27	"	"	80		"
12	Sw ¼ ne ¼	29	"	"	40		"
13	S ½ nw ¼ & e ½ sw ¼	29	"	"	160		"
14	N ½ se ¼	29	"	"	80		"
15	S ½ se ¼	29	"	"	80		"
16	E ½ sw ¼	31	"	"	80		"
17	Se ¼	31	"	"	160		"
18	Se ¼ ne ¼	31	"	"	40		"
19	N ½ nw ¼ & sw ¼ nw ¼	33	"	"	120		"
20	Nw ¼ ne ¼, n ½ nw ¼ & sw ¼ nw ¼	35	"	"	160		"
21	Nw ¼ sw ¼ & se ¼ sw ¼	35	"	"	80		"
22	N ½ ne ¼	31	55	10	80		"
23	Sw ¼ se ¼	1	54	11	40		"
24	Ne ¼ ne ¼ & s ½ nw ¼	3	"	"	118.45		"
25	Lots 1 & 2	5	"	"	91.06		"
26	Lots 3 & 6	5	"	"	36.69		"
27	Lots 4 & 5	5	"	"	79.92		"
28	Nw ¼ ne ¼	5	"	"	38.75		"
29	Nw ¼	5	"	"	156.99		"
30	Nw ¼ sw ¼	5	"	"	40		"
31	Nw ¼ sw ¼ & se ¼ sw ¼	7	"	"	82.32		"
32	Sw ¼ se ¼	7	"	"	40		"
33	Se ¼ se ¼	7	"	"	40		"
34	Nw ¼ ne ¼	9	"	"	40		"
35	Sw ¼ ne ¼ & se ¼ nw ¼	9	"	"	80		"
36	N ½ sw ¼ & w ½ se ¼	9	"	"	160		"
37	Sw ¼ sw ¼	9	"	"	40		"

460 North of Base Line and west of 4th Principal Meridian.

Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS	Withdrawn from
					Acres	100ths		
1	N ½ ne ¼ & sw ¼ ne ¼	15	51	14	120		C. E. 292 May 15-69	Cksi.
2	Se ¼ ne ¼	15	"	"	40		" "	do
3	S ½ nw ¼	15	"	"	80		C. E. 407 Mar. 24th, 70	do
4	N ½ sw ¼	15	"	"	80		C. E. 290 May 13-69	do
5	S ½ sw ¼	15	"	"	80		" "	do
6	Ne ¼ se ¼	15	"	"	40		" "	do
7	W ½ se ¼	15	"	"	80		" "	do
8	Se ¼ se ¼	15	"	"	40		" "	do
9	N ½ se ¼	21	"	"	80		C. E. 346 July 21-69 Pat.	do
10	Ne ¼ nw ¼	21	"	"	40		Hd. 658 July 20-69 Pat.	do
11	W ½ nw ¼	21	"	"	80		" "	do
12	Se ¼ nw ¼	21	"	"	40		" "	do
13	Sw ¼	21	"	"	160		C. E. 319 June 17-69	do
14	S ½ se ¼	21	"	"	80		C. E. 335 Fwb'y 12-69	do
15	N ½ ne ¼	23	"	"	80		C. E. 287 May 12-69 Pat.	do
16	S ½ ne ¼	23	"	"	80		" " "	do
17	Nw ¼	23	"	"	160		C. E. 283 Apr. 20-69 Pat.	do
18	Ne ¼ sw ¼	23	"	"	40		C. E. 264 Oct. 1-68	do
19	W ½ sw ¼ & se ¼ sw ¼	23	"	"	120		" "	do
20	Se ¼	23	"	"	160		C. E. 273 Dec. 8-68 Pat.	do
21	N ½ nw ¼	25	"	"	80		C. E. 275 Dec. 8-68 "	do
22	N ½ ne ¼	25	"	"	80		C. E. 274 Dec. 8-68 "	do
23	Sw ¼ ne ¼	25	"	"	40		" " " " "	do
24	Se ¼ ne ¼ & n ½ se ¼	25	"	"	120		" " " " "	do
25	S ½ se ¼	25	"	"	80		" " " " "	do
26	Ne ¼ ne ¼	27	"	"	40		A. C. S. 364 Oct. 1-68	do
27	W ½ ne ¼	27	"	"	80		" "	do
28	Se ¼ ne ¼	27	"	"	40		" "	do
29	Nw ¼	27	"	"	160		C. E. 277 Dec. 14-68 Pat.	do
30	Ne ¼ sw ¼	27	"	"	40		" " "	do
31	W ½ sw ¼	27	"	"	80		" " "	do
32	Se ¼ sw ¼	27	"	"	40		" " "	do
33	Ne ¼ se ¼	27	"	"	40		C. E. 234 Aug. 17-68 Pat.	do
34	Se ¼ se ¼	27	"	"	40		" " "	do
35	W ½ se ¼	27	"	"	80		C. E. 262 Oct. 1-68	do
36	Sw ¼	29	"	"	160		" 300 Mar. 25-69	do
37	Ne ¼ ne ¼	29	"	"	40		" 316 June 9-69	do

North of Base Line and West of 4th Principal Meridian. Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

No.	PART OF SECTION	Sec.	Town.	Range	AREA Acres 100ths	REMARKS
38	W ½ ne ¼	11	54	11	80	In lieu of
39	Nw ¼ & nw ¼ sw ¼	11	"	"	200	"
40	Ne ¼ sw ¼	11	"	"	40	"
		Ford.			3246.75	
		Ford.			3246.75	
41	W ½ se ¼	11	54	11	80	"
42	Sw ¼ ne ¼	15	"	"	40	"
43	Se ¼ nw ¼	15	"	"	40	"
44	Sw ¼ ne ¼	17	"	"	40	"
45	Nw ¼ ne ¼ & N ½ nw ¼	17	"	"	120	"
46	Se ¼ nw ¼	17	"	"	40	"
47	Sw ¼ nw ¼ & n½ sw ¼	17	"	"	120	"
48	N ½ nw ¼ & se ¼ nw ¼	19	"	"	121.94	"
49	Sw ¼ nw ¼	19	"	"	41.81	"
50	N ½ sw ¼ & sw ¼ sw ¼	19	"	"	123.20	"
51	Sw ¼	31	"	"	163.91	"
52	Se ¼	31	"	"	160	"
53	Se ¼ sw ¼	33	"	"	40	"
54	S ½ nw ¼ & ne ¼ sw ¼	17	55	11	120	"
55	W ½ sw ¼ & se ¼ sw ¼	17	"	"	120	"
56	Ne ¼ ne ¼ & S ½ ne ¼	19	"	"	120	"
57	Nw ¼ ne ¼ & n ½ nw ¼	19	"	"	119.49	"
58	Sw ¼ nw ¼	19	"	"	39.67	"
59	Se ¼ nw ¼	19	"	"	40	"
60	N ½ sw ¼ & sw ¼ sw ¼	19	"	"	119.90	"
61	Se ¼ sw ¼	19	"	"	40	"
62	Nw ¼ se ¼	19	"	"	40	"
63	Se ¼ se ¼	19	"	"	40	"
64	Sw ¼ nw ¼ & nw ¼ sw ¼	21	"	"	80	"
65	Se ¼ se ¼	21	"	"	40	"
66	E ½ sw ¼	23	"	"	80	"
67	Nw ¼ nw ¼	25	"	"	80	"
68	Ne ¼ ne ¼	27	"	"	40	"
69	W ½ ne ¼ & se ¼ ne ¼	27	"	"	120	"
70	Nw ¼ & nw ¼ sw ¼	27	"	"	200	"
		Forward			5776.67	

461 North of Base Line and West of 4th Principal Meridian.

Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS	With-drawn from
					Acres	100ths		
38	W ½ ne ¼	29	51	14	80		C. E. 316 June 9-69	C Ksi. 12
39	Se ¼ ne ¼ & nw ¼	29	"	"	200		" "	do
40	Ne ¼ se ½	31	"	"	40		A. C. S. 357 Oct. 1-68	do
		Ford.			3240			
		Ford.			3240			
41	W ½ se ¼	31	51	14	80		A. C. S. 357 Oct. 1-68	do
42	Se ¼ se ¼	31	"	"	40		" "	do
43	Ne ¼ ne ¼	31	"	"	40		C. E. 291 May 15-69	do
44	Nw ¼ ne ¼	31	"	"	40		" "	do
45	S ½ ne ¼ & se ¼ nw ¼	31	"	"	120		" "	do
46	Ne ¼ nw ¼	31	"	"	40		" "	do
47	W ½ nw ¼ & nw ¼ sw ¼	31	"	"	125.68		" "	do
48	Ne ¼ sw ¼ & s ½ sw ¼	31	"	"	121.98		" "	do
49	Ne ¼ ne ¼	33	"	"	40		Wt. 332 Oct. 16-68	do
50	W ½ ne ¼ & se ¼ ne ¼	33	"	"	120		" "	do
51	Nw ¼	33	"	"	160		Wt. 333 Oct. 16-68	do
52	Sw ¼	33	"	"	160		A. C. S. 360 Oct. 1-68	do
53	Ne ¼ se ¼	33	"	"	40		" 361 "	do
54	W ½ se ¼ & se ¼ se ¼	33	"	"	120		" " "	do
55	N ½ ne ¼ & se ¼ ne ¼	35	"	"	120		C. E. April 3/68	do
56	Sw ¼ ne ¼ & e ½ nw ¼	35	"	"	120		" "	do
57	W ½ nw ¼ & nw ¼ se ¼	35	"	"	120		" "	do
58	Ne ¼ se ¼	35	"	"	40		" "	do
59	Se ¼ se ¼	35	"	"	40		" "	do
60	E ½ sw ¼ & sw ¼ se ¼	35	"	"	120		C. E. 242 Aug. 24-68	do
61	Sw ¼ sw ¼	35	"	"	40		" 257 Oct. 1-68	do
62	Lot 1	35	52	14	32.40		" 574 June 25-71 Pat.	do
63	Ne ¼ ne ¼	5	51	13	39.72		P. E. July 20-70 Pat.	do
64	W ½ ne ½	5	"	"	79.69		" " "	do
65	Se ¼ ne ¼	5	"	"	40		" " "	do
66	E ½ nw ¼	5	"	"	79.65		" " "	do
67	Nw ¼ nw ¼	5	"	"	39.62		" " "	do
68	Sw ¼ nw ¼	5	"	"	40		" " "	do
69	N ½ sw ¼ & sw ¼ sw ¼	5	"	"	120		P. E. May 24-70 Pat.	do
70	Se ¼ sw ¼ & se ¼	5	"	"	200		" " "	do
	Forward				5758.74			

North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

	PART OF SECTION	Sec.	Town.	Range	AREA Acres	 100ths	REMARKS
		For.			5776	.67	
71	Ne ¼ sw ¼ & s½ sw ¼	27	55	11	120		In lieu of
72	Se ¼	27	"	"	160		"
73	W ½ ne ¼	29	"	"	80		"
74	E ½ nw ¼	29	"	"	80		"
75	Sw ¼	29	"	"	160		"
76	Se ¼	29	"	"	160		"
77	Ne ¼ ne ¼	31	"	"	40		"
78	Nw ¼ ne ¼	31	"	"	40		"
79	Sw ¼ ne ¼	31	"	"	40		"
80	Se ¼ ne ¼	31	"	"	40		"
81	E ½ nw ¼	31	"	"	80		"
82	Nw ¼ nw ¼	31	"	"	39	.81	"
83	Sw ¼ nw ¼	31	"	"	40	.62	"
84	Ne ¼ sw ¼	31	"	"	40		"
85	Nw ¼ sw ¼	31	"	"	41	.45	"
86	S ½ sw ¼ & sw ¼ se ¼	31	"	"	122	.27	"
87	N ½ se ¼	31	"	"	80		"
88	Se ¼ se ¼	31	"	"	80		"
89	W ½ nw ¼	33	"	"	80		"
90	Ne ¼ sw ¼	35	"	"	40		"
91	Se ¼ sw ¼	35	"	"	40		"
92	N ½ ne ¼ & se ¼ ne ¼	1	53	12	119	.67	"
93	Ne ¼ nw ¼	1	"	"	39	.76	"
94	Lot 1 & se ¼ ne ¼	1	54	12	80	.60	"
95	Lot 2	1	"	"	41	.75	"
96	Sw ¼ ne ¼	1	"	"	40		"
97	Lots 3 & 4	1	"	"	86	.85	"
98	Sw ¼ nw ¼	1	"	"	40		"
99	Se ¼ nw ¼	1	"	"	40		"
100	N ½ sw ¼	1	"	"	80		"
101	S ½ sw ¼ & s ½ se ¼	1	"	"	160		"
102	Ne ¼ se ¼	1	"	"	40		"
103	Nw ¼ se ¼	1	"	"	40		"
104	Lots 2, 3, 4, 5 & 7	3	"	"	169	.66	"
105	Sw ¼ nw ¼	3	"	"	40		"
106	Lots 5, 7 & 8	5	"	"	101	.90	"
107	Lot 9	5	"	"	33		"
108	Sw ¼ nw ¼ & ne ¼ sw ¼	5	"	"	80		"
109	Lots 3 & 4	7	"	"	87	.40	"
		Ford			8661	.41	

462 North of Base Line and West of 5th Principal Meridian.

Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS	
					Acres	100ths		
		Ford			5778	74		
71	Lots 11-12-13-14	7	133	31	134	35	C. E. 5154 Sep. 28-70	Pat.
72	W ½ se ¼ Lots 9 & 10	7	"	"	160		" " " "	"
73	E ½ se ¼	7	"	"	80		" " " "	"
74	Lots 10 & 13	19	"	"	69	66	" 5153 Sept. 28-70	"
75	Nw ¼ ne ¼ Lots 1-2-3	19	"	"	159	84	" " "	"
76	Sw ¼ nw ¼ & sw ¼	7	132	33	176	51	" 5159 Oct. 1-70	"
77	Nw ¼ nw ¼	7	"	"	32	04	" " "	"
78	Sw ¼ nw ¼	19	133	33	38	42	" 5157 Oct. 7-70	"
79	Se ¼ nw ¼	19	"	"	40		" " "	"
80	Nw ¼ sw ¼	19	"	"	38	89	" " "	"
81	E ½ sw ¼	19	"	"	80		" " "	"
82	Se ¼ ne ¼	1	132	34	40		Wt. 4215 Oct. 8-70	"
83	Sw ¼ ne ¼	1	"	"	40		" "	"
84	Sw ¼ nw ¼	1	"	"	40		" "	"
85	Se ¼ nw ¼	1	"	"	40		" "	"
86	Nw ¼ ne ¼ & N ½ nw ¼	1	"	"	133	66	C. E. 5161 Oct. 1-70	"
87	E ½ sw ¼	1	"	"	80		Wt. 4214 Oct. 8-70	"
88	Sw ¼ sw ¼	1	"	"	40		" "	"
89	N ½ se ¼	1	"	"	80		Wt. 4217 Oct. 10-70	"
90	Sw ¼ se ¼	1	"	"	40		" "	"
91	Ne ¼ se ¼	5	"	"	40		C. E. 5176 Nov. 1-70	"
92	W ½ se ¼ & se ¼ se ¼	5	"	"	120		" "	"
93	Se ¼ ne ¼	5	"	"	40		" "	"
94	W ½ ne ¼	5	"	"	84	05	" "	"
95	Ne ¼ ne ¼	5	"	"	44	42	" "	"
96	Ne ¼ sw ¼	1	133	34	40		C. E. 5147 Sept. 28-70	"
97	S ½ sw ¼	1	"	"	80		" " " "	"
98	Sw ¼ nw ¼	1	"	"	40		" 5128 Sept. 21-70	"
99	Nw ¼ nw ¼	1	"	"	39	60	" " " "	"
100	N ½ sw ¼	3	"	"	80		" 5132 Sept. 24-70	"
101	S ½ sw ¼ & s ½ se ¼	3	"	"	160		" " " "	"
102	Ne ¼ se ¼	3	"	"	40		" " " "	"
193	Nw ¼ se ¼	3	"	"	40		" " " "	"
104	S ½ ne ¼ & s ½ nw ¼	3	"	"	160		" " " "	"
105	Ne ¼ ne ¼	3	"	"	37	63	" " " "	"
106	Nw ¼ ne ¼ & n ½ nw ¼	3	"	"	110	77	" " " "	"
107	Se ¼ ne ¼	5	"	"	40		C. E. 5149 Sept. 28-70	"
108	N ½ se ¼	5	"	"	80		" "	"
109	S ½ se ¼	5	"	"	80		" "	"
		Ford.			8658	58		

North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
					Acres	100ths	
		Ford.			8661	.41	
110	Lot 7	7	54	12	47	.20	In lieu of
111	Ne ¼ sw ¼ & Lot 8	7	"	"	74	.75	"
112	Lot 10	7	"	"	41	.35	"
113	Nw ¼ ne ¼	9	"	"	40		"
114	Nw ¼	9	"	"	160		"
115	N ½ ne ¼ & sw ¼ ne ¼	11	"	"	120		"
116	Nw ¼ se ¼	11	"	"	40		"
117	Sw ¼ se ¼	11	"	"	40		"
118	Se ¼ se ¼	11	"	"	40		"
119	Ne ¼ & e ½ nw ¼	13	"	"	240		"
120	W ½ nw ¼	13	"	"	80		"
121	Sw ¼	13	"	"	160		"
122	N ½ se ¼	13	"	"	80		"
123	S ½ se ¼	13	"	"	80		"
124	Lots 1 & 2	15	"	"	53	.75	"
125	Lots 3 & 4	15	"	"	77		"
126	Se ¼ nw ¼	15	"	"	40		"
127	N ½ nw ¼ & sw ¼ nw ¼	15	"	"	120		"
128	Ne ¼ sw ¼	15	"	"	40		"
129	S ½ sw ¼	15	"	"	80		"
130	Nw ¼ se ¼ & Lot 5	15	"	"	70	.85	"
131	Ne ¼ se ¼ & Lot 6	15	"	"	76	.85	"
132	Lot 2	17	"	"	27	.50	"
133	Nw ¼ nw ¼	17	"	"	40		"
134	S ½ nw ¼	17	"	"	80		"
135	N ½ sw ¼ & nw ¼ se ¼	17	"	"	120		"
136	Se ¼ sw ¼ & s ½ se ¼	17	"	"	120		"
137	Ne ¼ se ¼	17	"	"	40		"
138	Lot 2	19	"	"	42	.10	"
139	Se ¼ ne ¼ & ne ¼ se ¼	19	"	"	80		"
140	Se ¼ sw ¼ & Lot 5	19	"	"	95	.10	"
141	Ne ¼ ne ¼	21	"	"	40		"
142	Se ¼ ne ¼	21	"	"	40		"
143	Sw ¼ ne ¼ & se ¼ nw ¼	21	"	"	80		"
144	N ½ nw ¼ & sw ¼ nw ¼	21	"	"	120		"
145	E ½ sw ¼	21	"	"	80		"
146	Nw ¼ sw ¼	21	"	"	40		"
147	Sw ¼ sw ¼	21	"	"	40		"
148	Se ¼	21	"	"	160		"
		Ford.			11707	.86	

463 North of Base Line and West of 5th Principal Meridian.

Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
					Acres	100ths	
		Ford.			8658	58	
110	Se ¼ se ¼	7	133	34	40		C. E. 5129 Sept. 21-70 Pat.
111	S ½ sw ¼	7	"	"	78	15	" " "
112	Sw ¼ se ¼	7	"	"	40		" " "
113	Ne ¼ nw ¼	9	"	"	40		C. E. 5137 Sept. 26-70 "
114	Sw ¼	9	"	"	160		A. C. S. 3109 Aug. 24-70 "
115	E ½ ne ¼ & ne ¼ se ¼	9	"	"	120		Wt. 4213 Sept. 20-70 Pat.
116	Se ¼ se ¼	9	"	"	40		" " "
117	Sw ¼ nw ¼	9	"	"	40		C. E. 5137 Sept. 26-70 "
118	Se ¼ nw ¼	9	"	"	40		" " "
119	S ½ ne ¼ & se ¼	11	"	"	240		C. E. 5148 Sept. 28-70 "
120	N ½ nw ¼	11	"	"	80		C. E. 5127 Sept. 21-70 "
121	S ½ nw ¼ & n ½ sw ¼	11	"	"	160		" " "
122	S ½ sw ¼	11	"	"	80		" " "
123	W ½ nw ¼	13	"	"	80		C. E. 5166 Oct. 8-70 "
124	Nw ¼ sw ¼	13	"	"	40		" " "
125	N ½ sw ¼	15	"	"	80		Wt. 4206 Sept. 14-70
126	Se ¼ sw ¼	15	"	"	40		" "
127	E ½ se ¼ & sw ¼ se ¼	15	"	"	120		Wt. 4205 Sept. 14-70
128	Nw ¼ se ¼	15	"	"	40		" "
129	N ½ ne ¼	15	"	"	80		Wt. 4203 Sept. 14-70
130	S ½ ne ¼	15	"	"	80		" "
131	N ½ nw ¼	15	"	"	80		Wt. 4204 Sept. 14-70
132	Sw ¼ nw ¼	15	"	"	40		" "
133	Se ¼ nw ¼	15	"	"	40		" "
134	N ½ ne ¼	17	"	"	120		C. E. 5097 Aug. 24-70
135	S ½ ne ¼ & se ¼ nw ¼	17	"	"	120		" "
136	N ½ nw ¼ & sw ¼ nw ¼	17	"	"	120		" "
137	Ne ¼ sw ¼	17	"	"	40		" "
138	Nw ¼ sw ¼	17	"	"	40		" "
139	S ½ sw ¼	17	"	"	80		" "
140	N ½ se ¼	17	"	"	80		" "
141	Sw ¼ se ¼	17	"	"	40		" "
142	Se ¼ se ¼	17	"	"	40		" "
143	N ½ ne ¼	19	"	"	80		C. E. 5108 Sept. 2-70 Pat.
144	S ½ ne ¼ & se ¼ nw ¼	19	"	"	120		" " "
145	N ½ nw ¼	19	"	"	77	35	" " "
146	Sw ¼ nw ¼	19	"	"	37	54	" " "
147	Ne ¼ sw ¼	19	"	"	40		C. E. 5098 Aug. 24-70 "
148	Se ¼	19	"	"	160		" " " "
		Ford.			11691	62	

463A

North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
					Acres	100ths	
		Ford			11707	.86	
149	N ½ ne ¼	23	54	12	80		In lieu of
150	Sw ¼ ne ¼	23	"	"	40		"
151	Se ¼ ne ¼	23	"	"	40		"
152	E ½ nw ¼	23	"	"	80		"
153	Nw ¼ nw ¼	23	"	"	40		"
154	Ne ¼ sw ¼ & s ½ sw ¼	23	"	"	120		"
155	Nw ¼ se ¼	23	"	"	40		"
156	Ne ¼ se ¼ & s ½ se ¼	23	"	"	120		"
157	Ne ¼ ne ¼ & s ½ ne ¼	25	"	"	120		"
158	Nw ¼ ne ¼	25	"	"	40		"
159	N ½ nw ¼ & se ¼ nw ¼	25	"	"	120		"
160	Sw ¼ nw ¼	25	"	"	40		"
161	N ½ sw ¼ & sw ¼ sw ¼	25	"	"	120		"
162	Se ¼ sw ¼ & sw ¼ se ¼	25	"	"	80		"
163	N ½ se ¼	25	"	"	80		"
164	Se ¼ se ¼	25	"	"	40		"
165	Ne ¼	27	"	"	160		"
166	S ½ sw ¼	27	"	"	80		"
167	E ½ se ¼ & sw ¼ se ¼	27	"	"	120		"
168	Nw ¼ se ¼	27	"	"	40		"
169	N ½ ne ¼	29	"	"	80		"
170	Se ¼ ne ¼	29	"	"	40		"
171	N ½ nw ¼ & sw ¼ nw ¼	29	"	"	120		"
172	Se ¼ nw ¼	29	"	"	40		"
173	Nw ¼ sw ¼	29	"	"	40		"
174	Sw ¼ ne ¼ & se ¼ nw ¼	33	"	"	80		"
175	Sw ¼ ne ¼	35	"	"	40		"
176	N ½ ne ¼ & se ¼ ne ¼	35	"	"	120		"
177	Ne ¼ nw ¼ & sw ¼ nw ¼	35	"	"	80		"
178	Se ¼ nw ¼ & n ½ sw ¼	35	"	"	120		"
179	N ½ se ¼ & sw ¼ se ¼	35	"	"	120		"
180	Ne ¼ ne ¼	7	55	12	40		"
181	Nw ¼ ne ¼	7	"	"	40		"
182	Ne ¼ nw ¼	7	"	"	40		"
183	Se ¼ nw ¼, Lots 1 & 2	7	"	"	128	.89	"
184	Lot 2	9	"	"	46	.90	"
185	W ½ sw ¼ Lots 5, 7 & 8	9	"	"	149	.55	"
186	Sw ¼ se ¼	9	"	"	40		"
187	E ½ sw ¼ & n ½ se ¼	11	"	"	160		"
		Ford.			14833	.20	

464 North of Base Line and West of 5th Principal Meridian. Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
					Acres	100ths	
		Ford.			11691.	62	
149	S ½ sw ¼	19	133	34	77.	90	C. E. 5098 Aug. 24-70 Pat.
150	Nw ¼ sw ¼	19	"	"	37.	73	" " "
151	Ne ¼ nw ¼	21	"	"	40		Wt. 4207 Sept. 14-70
152	W ½ nw ¼	21	"	"	80		" "
153	Se ¼ nw ¼	21	"	"	40		" "
154	N ½ sw ¼ & sw ¼ sw ¼	21	"	"	120		A. C. S. 3102 Aug. 24-70 Pat.
155	Se ¼ sw ¼	21	"	"	40		" " "
156	N ½ ne ¼ & se ¼ ne ¼	29	"	"	120		C. E. 5098 Aug. 24-70 "
157	Sw ¼ ne ¼ & e ½ nw ¼	29	"	"	120		" " "
158	Nw ¼ nw ¼	29	"	"	40		" " "
159	Sw ¼ nw ¼ & n ½ sw ¼	29	"	"	120		" " "
160	Sw ¼ sw ¼	29	"	"	40		" " "
161	Se ¼ sw ¼ & w ½ se ¼	29	"	"	120		" " "
162	E ½ se ¼	29	"	"	80		" " "
163	N ½ ne ¼	31	"	"	80		C. E. 5163 Oct. 7-70 "
164	Se ¼ ne ¼	31	"	"	40		" " "
165	Nw ¼	31	"	"	157.	39	" " "
166	Sw ¼ ne ¼ & nw ¼ se ¼	31	"	"	80		" " "
167	Ne ¼ se ¼ & s ½ se ¼	31	"	"	120		" " "
168	Ne ¼ sw ¼	31	"	"	40		" " "
169	S ½ sw ¼	31	"	"	79.	78	" " "
170	Nw ¼ sw ¼	31	"	"	39.	34	" " "
171	N ½ ne ¼ & se ¼ ne ¼	33	"	"	120		C. E. 5151 Sept. 28-70 "
172	Sw ¼ ne ¼	33	"	"	40		" " "
173	Ne ¼ nw ¼	33	"	"	40		" " "
174	W ½ nw ¼	33	"	"	80		" " "
175	Se ¼ nw ¼	33	"	"	40		" " "
176	N ½ sw ¼ & sw ¼ sw ¼	33	"	"	120		C. E. 5175 Nov. 1-70 "
177	Se ¼ sw ¼ & sw ¼ se ¼	33	"	"	80		" " "
178	N ½ se ¼ & se ¼ se ¼	33	"	"	120		" " "
179	N ½ nw ¼ & sw ¼ nw ¼	35	"	"	120		Wt. 4216 Oct. 10-70 "
180	Se ¼ nw ¼	35	"	"	40		" " "
181	Ne ¼ sw ¼	35	"	"	40		C. E. 5158 Dec. 1-70 "
182	Se ¼ sw ¼	35	"	"	40		" " "
183	N ½ sw ¼ & sw ¼ sw ¼	9	133	35	120		Wt. 4223 Oct. 24-70 "
184	Se ¼ sw ¼	9	"	"	40		" " "
185	Se ¼	9	"	"	160		Wt. 4222 Oct. 24-70 "
186	Ne ¼ ne ¼	13	"	"	40		C. E. 5143 Sept. 28-70 "
187	Nw ¼	13	"	"	160		" " "
		Ford.			14803.	76	

North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

					AREA		
	PART OF SECTION	Sec.	Town.	Range	Acres	100ths	REMARKS
		Ford.			14833	20	
188	Nw ⅓ ne ¼	13	55	12	40		In lieu of
189	S ½ ne ¼	13	"	"	80		"
190	Nw ¼ nw ¼ & ne ¼ sw ¼	13	"	"	80		"
191	S ½ sw ¼ & s ½ se ¼	13	"	"	160		"
192	Ne ¼ se ¼	13	"	"	40		"
193	Nw ¼ se ¼	13	"	"	40		"
194	S ½	15	"	"	320		"
195	Se ¼ ne ¼	15	"	"	40		"
196	Lots 3 & 6	19	"	"	102	15	"
197	Se ¼ sw ¼ sw ¾ Lots 11, 12 & 13	19	"	"	159	75	"
198	W ½ ne ¼	21	"	"	80		"
199	N ½ nw ¼ & se ¼ nw ¼	21	"	"	120		"
200	Ne ¼ sw ¾ & s ½ sw ¼	21	"	"	120		"
201	N ½ se ¼ & se ¼ se ¼	21	"	"	120		"
202	Ne ¼	23	"	"	160		"
203	N ½ nw ¼	23	"	"	80		"
204	S ½ nw ¼	23	"	"	80		"
205	E ½ sw ¼	23	"	"	80		"
206	Lot 1	23	"	"	38	60	"
207	Se ¼	23	"	"	160		"
208	Lots 1 & 2	27	"	"	61	35	"
209	Lot 8	27	"	"	19	25	"
210	N ½ nw ¼	27	"	"	80		"
211	Nw ¼ sw ¼ & Lot 6	27	"	"	89	10	"
212	Ne ¼	29	"	"	160		"
213	E ½ nw ¼	29	"	"	80		"
214	Sw ¼ nw ¼	29	"	"	40		"
215	Nw ¼ se ¼ Lots 1 & 2	29	"	"	98	10	"
216	N ½ ne ¼	31	"	"	80		"
217	E ½ sw ¼	31	"	"	80		"
218	Lot 5	31	"	"	44	25	"
219	W ½ se ¼	31	"	"	80		"
220	Se ¼ se ¼	31	"	"	40		"
221	S ¼ ne ¼	33	"	"	80		"
222	Nw ¾ ne ¼	33	"	"	40		"
223	E ½ nw ¼ & Lot 1	33	"	"	114	65	"
224	Lot 4	33	"	"	28	35	"
225	Sw ¼ nw ¼ Lots 2, 3 & 5	33	"	"	125	15	"
226	Nw ¼ se ¼	33	"	"	40		"
		Ford.			18313	90	

465 North of Base Line and West of 5th Principal Meridian. Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
					Acres	100ths	
		Ford.			14803	.76	
188	Nw ¼ ne ¼	13	133	35	40		C. E. 5143 Sept. 28-70 Pat.
189	S ½ ne ¼	13	"	"	80		" " "
190	N ½ sw ¼	13	"	"	80		" " "
191	S ½ sw ¼ & s ½ se ¼	13	"	"	160		" " "
192	Ne ¼ se ¼	13	"	"	40		" " "
193	Nw ¼ se ¼	13	"	"	40		" " "
194	N ½	17	"	"	320		C. E. 5140 Sept. 28-70 Pat.
195	Ne ¼ sw ¼	17	"	"	40		C. E. 5155 Sept. 28-70 "
196	W ½ sw ¼ & se ¼ sw ¼	17	"	"	120		" " "
197	Se ¼	17	"	"	160		" " "
198	N ½ ne ¼	21	"	"	80		C. E. 5141 Sept. 28-70 "
199	S ½ ne ¼ & ne ¼ se ¼	21	"	"	120		" " "
200	W ½ se ¼ & se ¼ se ¼	21	"	"	120		" " "
201	N ½ ne ¼ & se ¼ ne ¼	23	"	"	120		C. E. 5162 Oct. 7-70 "
202	Se ¼	23	"	"	160		" " "
203	Sw ¼ ne ¼ & se ¼ nw ¼	23	"	"	80		" " "
204	N ½ sw ¼	29	136	38	80		Hd. 99 Apl. 28-69
205	S ½ sw ¼	29	"	"	80		" "
206	Lot 3	23	133	39	36	.35	Hd 3556 Mar. 2/67 Canc. 7/24/74
207	Sw ¼ nw ¼, n ½ sw ¼ & Lot 4	33	"	"	152		Hd 3557 Mar. 2/67 Canc. 7/24/74
208	Lots 8 & 9	5	133	40	71	.12	Hd 735 June 9-70 Canc. 1/4/72
209	Lot 10	5	"	"	26	.50	" " "
210	Lots 2 & 3	13	"	"	75	.35	Hd 5392 Aug. 1-68 Can. 8/19/76
211	Lots 2 & 3	33	136	40	90	.70	C. E. 654 Apl. 22-70
212	Nw ¼ ne ¼, s ½ ne ¼ & Lot 1	33	"	"	154	.05	A. C. S. 253 May 12-70
213	E ½ se ¼	33	"	"	80		A. C. S. 251 May 12-70
214	Lot 5	33	"	"	39	.71	" "
215	S ½ nw ¼	35	"	"	80		Hd 463 Oct. 22/69 Canc. 6/30/77
216	N ½ sw ¼	35	"	"	80		" " "
217	S ½ sw ¼	35	"	"	80		C. E. 712 May 12-70 Pat.
218	Se ¼ sw ¼	23	"	"	40		Hd 658 May 11-70
219	N ½ nw ¼	23	134	41	80		P. D. S. 1335 7/3/72 Set 7/2/70 Pat.
220	Lot 3	25	"	"	40	.05	P. D. S. 1364 7/17/74 Set 10/1/70 Hd 4001
221	S ½ ne ¼	25	"	"	80		" " Hd. 4001 4/18/78
222	Se ¼ nw ¼	25	"	"	40		" " Hd. 4001 4/18/78 Pat.
223	N ½ ne ¼ & sw ¼ ne ¼	9	136	43	120		D. S. 524 Jany. 20/71 Pat.
224	Se ¼ ne ¼	9	"	"	40		" " " 4/18/78 Pat.
225	N ½ nw ¼ & se ¼ nw ¼	9	"	"	120		D. S. A. C. S. 167 1/20/71 Pat.
226	Sw ¼ nw ¼	9	"	"	40		" " "
		Ford.			18289	.59	

North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

•	PART OF SECTION	Sec.	Town	Range	AREA Acres	AREA 100ths	REMARKS
		Ford.			18313	90	
227	Sw ¼ se ¼ & e ½ se ¼	33	55	12	120		In lieu of
228	E ½ nw ¼	35	"	"	80		"
229	W ½ nw ¼ & nw ¼ sw ¼	35	"	"	120		"
230	Ne ¼ sw ¼	35	"	"	40		"
231	Lot 1	35	"	"	30	60	"
232	Se ¼	35	"	"	160		"
Reinstated to here							
233	Se ¼ nw ¼, ne ¼ sw ¼ & se ¼ se ¼	1	54	13	120		"
234	S ½ sw ¼	3	"	"	80		"
235	Se ¼ ne ¼	5	"	"	40		"
236	S ½ nw ¼ & nw ¼ sw ¼	9	"	"	120		"
237	Nw ¼ se ¼	9	"	"	40		"
238	Sw ¼ se ¼	9	"	"	40		"
239	Ne ¼ se ¼	11	"	"	40		"
240	Se ¼ sw ¼	13	"	"	40		"
241	Nw ¼ ne ¼ & nw ¼ se ¼	15	"	"	80		"
242	Se ¼ nw ¼ Lots 1 & 4	19	"	"	132	21	"
243	Lots 3 & 7	21	"	"	49	10	"
244	Sw ¼ ne ¼ & ne ¼ nw ¼	23	"	"	80		"
245	S ½ ne ¼ & Lot 4	25	"	"	89	50	"
246	Se ¼ sw ¼	7	55	13	40		"
247	S ½ ne ¼ & nw ¼ se ¼	9	"	"	120		"
248	N ½ nw ¼ & e ½ sw ¼	9	"	"	160		"
		Forward			20135	31	

466 North of Base Line and West of 5th Principal Meridian. Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

PART OF SECTION		Sec.	Town.	Range	AREA		REMARKS
					Acres	100ths	
		For.			18289	.59	
227	N ½ ne ¼ & sw ¼ ne ¼	21	136	43	120		D. S. 472 12/30/70 Set 6/18/70 Hd 3332 9/14/76 Pat.
228	N ½ ne ¼	27	139	44	80		P. D. S. 428 7/8/72 Set 8/20/70 Pat.
229	N ½ se ¼ & sw ¼ se ¼	9	136	45	120		Hd. 1483 June 8/71 Canc. 9/12/78
230	Se ¼ se¼	9	"	"	40		" " "
231	Ne ¼ nw ¼	1	137	48	40	.56	C. E. 1277 May 23-71 Pat.
232	Se ¼	1	"	"	160		" " "
233	Nw ¼ nw ¼ & s ½ nw ¼	1	"	"	120	.89	" " "
234	S ½ ne ¼	3	140	48	80		C. E. /043 Sept. 26-70 "
235	Se ¼ nw ¼	3	"	"	40		" " "
236	N ½ ne ¼ & N ½ nw ¼	3	"	"	130	.23	" " "
237	Sw ¼ nw ¼	3	"	"	40		" " "
238	Ne ¼ se ¼	7	"	"	40		Wt. 237 Sept. 2/70 "
239	Se ¼ se ¼	7	"	"	40		" " "
240	Se ¼ ne ¼	7	"	"	40		Wt. 238 Sept. 2-70 "
241	N ½ ne ¼	7	"	"	80		" " "
242	N ½ ne ¼ & sw ¼ ne ¼	11	141	48	120		C. E. 1040 Sept. 26/70 "
243	Se ¼ ne ¼	11	"	"	40		" " "
244	W ½ sw ¼	7	140	48	68	:81	C. E. 1010 Sept. 2/70 "
245	S ½ ne ¼	33	143	48	80		C. E. 1054 Sept. 27/70 "
246	Ne ¼ se ¼	33	"	"	40		" " "
247	Nw ¼ se ¼ & S ½ se ¼	33	"	"	120		" " "
248	S ½ ne ¼ & s ½ nw ¼	1	140	49	160		Wt. 239 Sept. 2/70 "
		For.			20090	.08	

North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

					AREA		
	PART OF SECTION	Sec.	Town.	Range	Acres	100ths	REMARKS
		Ford.			20135	31	
249	Se ¼ ne ¼	11	55	13	40		In lieu of
250	Se ¼ sw ¼	11	"	"	40		"
251	Nw ¼ se ¼	11	"	"	40		"
252	Se ¼ se ¼	11	"	"	40		"
253	N ½ ne ¼	13	"	"	80		"
254	W ½ nw ¼ & se ¼ nw ¼	13	"	"	120		"
255	Sw ¼ se ¼	13	"	"	40		"
256	W ½ nw ¼	15	"	"	80		"
257	Se ¼ nw ¼	15	"	"	40		"
258	N ½ sw ¼ & se ¼ sw ¼	15	"	"	120		"
259	Ne ¼ se ¼	15	"	"	40		"
260	Ne ¼ nw ¼	17	"	"	40		"
261	Nw ¼ nw ¼	17	"	"	40		"
262	S ½ sw ¼	17	"	"	80		"
263	Nw ¼ ne ¼	19	"	"	40		"
264	Ne ¼ nw ¼ & Lot 1	19	"	"	84	35	"
265	Sw ¼ ne ¼	21	"	"	40		"
266	Ne ¼ nw ¼	21	"	"	40		"
267	Ne ¼ se ¼	21	"	"	40		"
268	N ½ nw ¼ & se ¼ nw ¼	23	"	"	120		"
269	N ¼ sw ¼	23	"	"	80		"
270	Se ¼ nw ¼	27	"	"	40		"
271	E ½ se ¼	33	"	"	80		"
272	Nw ¼ se ¼	35	"	"	40		"
273	Sw ¼ nw ¼ & sw ¼ sw ¼	3	54	14	80		"
274	E ½ se ¼	3	"	"	80		"
275	Sw ¼ ne ¼ & nw ¼ sw ¼	5	"	"	80		"
		Forward			21819	66	

467 **North of Base Line and West of 4th Principal Meridian.**

Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA Acres	 100ths	REMARKS
	Ford.				20090	08	
249	Se ¼ ne ¼	17	51	16	40		St. P. & D. R. R. 20 miles Sel. 9/30/72 app'd 6/7/73
250	Ne ¼ nw ¼	17	"	"	40		" " "
251	Nw ¼ nw ¼	17	"	"	40		" " "
252	Sw ¼ nw ¼	17	"	"	40		" " "
253	Se ¼ nw ¼ & ne ¼ sw ¼	17	"	"	80		" " "
254	S ½ sw ¼ & sw ¼ se ¼	17	"	"	120		" " "
255	Nw ¼ se ¼	17	"	"	40		" " "
256	E ½ se ¼	17	"	"	80		" " "
257	Ne ¼ ne ¼	19	"	"	40		" " "
258	W ½ ne ¼ & se ¼ nw ¼	19	"	"	120		" " "
259	Ne ¼ nw ¼	19	"	"	40		" " "
260	Lot 1	19	"	"	42	98	" " "
261	Ne ¼ sw ¼	19	"	"	40		" " "
262	Nw ¼ se ¼ & Lot 8	19	"	"	79	95	" " "
263	Ne ¼ ne ¼	23	"	"	40		" " "
264	S ½ ne ¼	23	"	"	80		" " "
265	Nw ¼ ne ¼	23	"	"	40		" " "
266	Ne ¼ nw ¼	23	"	"	40		" " "
267	Nw ¼ nw ¼	23	"	"	40		" " "
268	S ½ nw ¼ & ne ¼ sw ¼	23	"	"	120		" " "
269	W ½ sw ¼	23	"	"	80		" " "
270	Ne ¼ ne ¼	25	"	"	40		" " "
271	Nw ¼ ne ¼ & ne ¼ nw ¼	25	"	"	80		" " "
272	Se ¼ nw ¼	25	"	"	40		" " "
273	Sw ¼ nw ¼ & nw ¼ sw ¼	25	"	"	80		" " "
274	Lots 1 & 2	25	"	"	93	10	" " "
275	Lots 3 & 4	25	"	"	76	53	" " "
	Forward				21782	66	

North of Base Line and West of 4th Principal Meridian.
Northern Pacific Railroad.
List of selections made at U. S. Land Office, Duluth, Minn.

	PART OF SECTION	Sec.	Town.	Range	AREA Acres	100ths	REMARKS
		Ford.			21819	.66	
276	Sw ¼ ne ¼ & sw ¼ se ¼	7	54	14	80		In lieu of
277	Se ¼ ne ¼	9	"	"	40		"
278	Se ¼ sw ¼	13	"	"	40		"
279	Sw ¼ ne ¼	17	"	"	40		"
280	Nw ¼ ne ¼ Lots 1 & 2	19	"	"	117	.60	"
281	Ne ¼ se ¼	19	"	"	40		"
282	Se ¼ se ¼	21	"	"	40		"
283	Se ¼ nw ¼	23	"	"	40		"
284	Ne ¼ se ¼	1	55	14	40		"
285	E ½ sw ¼ & nw ¼ se ¼	5	"	"	120		"
286	Sw ¼ ne ¼ & Lot 2	7	"	"	81	.28	"
287	Sw ¼ ne ¼	9	"	"	40		"
288	Nw ¼ sw ¼	11	"	"	40		"
289	Nw ¼ ne ¼ & ne ¼ sw ¼	13	"	"	80		"
290	Ne ¼ ne ¼ & sw ¼ ne ¼	15	"	"	80		"
291	Se ¼ nw ¼ & nw ¼ sw ¼	15	"	"	80		"
292	S ½ sw ¼ & ne ¼ se ¼	15	"	"	120		"
293	Nw ¼ ne ¼ & se ¼ nw ¼	17	"	"	80		"
294	Nw ¼ ne ¼ & ne ¼ nw ¼	21	"	"	80		"
295	W ½ sw ¼	21	"	"	80		"
296	Lot 2	23	"	"	32	.25	"
297	Se ¼ nw ¼	29	"	"	40		"
298	Ne ¼ sw ¼ & N ½ se ¼	1	54	15	120		"
299	Sw ¼ ne ¼ & Lot 2	3	"	"	84	.45	"
300	S ½ nw ¼ & Lot 3	3	"	"	124	.62	"
301	Sw ¼	3	"	"	160		"
302	N ½ se ¼ & sw ¼ se ¼	3	"	"	120		"
303	Se ¼ se ¼	3	"	"	40		"
304	S ½ ne ¼ & se ¼ nw ¼	5	"	"	120		"
305	S ½ sw ¼	5	"	"	80		"
306	Ne ¼ w ½ se ¼ Lots 5, 6 & 7	7	"	"	318	.55	"
307	Ne ¼ & ne ¼ nw ¼	9	"	"	200		"
308	W ½ nw ¼ & se ¼ nw ¼	9	"	"	120		"
309	Ne ¼ sw ¼	9	"	"	40		"
310	Nw ¼ sw ¼	9	"	"	40		"
311	Se ¼ sw ¼ & se ¼	9	"	"	200		"
312	N ½ ne ¼	11	"	"	80		"
313	Sw ¼ ne ¼	11	"	"	40		"
314	Sw ¼ nw ¼ & nw ¼ sw ¼	11	"	"	80		"
		Ford			25218	.41	

468 North of Base Line and West of 4th Principal Meridian. Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS	With-drawn from
					Acres	100ths		
	Ford.				21782	66		
276	N ½ ne ¼	11	46	16	80		St. P. & D. R. R. 20 miles app'd 3/25/68	Duluth 17
277	Sw ¼ ne ¼	11	“	“	40		“ “	do
278	Se ¼ ne ¼	11	“	“	40		“ “	do
279	Ne ¼ ne ¼	13	“	“	40		“ “	do
280	Nw ¼ ne ¼ & s ½ ne ¼	13	“	“	120		“ “	do
281	Ne ¼ se ¼	13	“	“	40		“ “	do
282	Nw ¼ se ¼	13	“	“	40		“ “	do
283	Sw ¼ se ¼	13	“	“	40		“ “	do
284	Se ¼ se ¼	13	“	“	40		“ “	do
285	N ½ nw ¼ & se ¼ nw ¼	13	“	“	120		“ “	do
286	E ½ sw ¼	13	“	“	80		“ “	do
287	Sw ¼ sw ¼	13	“	“	40		“ “	do
288	Nw ¼ ne ¼	23	51	17	40		“ sel 9/30/72 app'd 6/7/73	do
289	N ½ nw ¼	23	“	“	80		“ “ “	do
290	S ½ nw ¼	23	“	“	80		“ “ “	do
291	N ½ sw ¼	23	“	“	80		“ “ “	do
292	Sw ¼ sw ¼ & w ½ se ¼	23	“	“	120		“ “ “	do
293	N ½ ne ¼	27	“	“	80		“ “ “	do
294	N ½ nw ¼	27	“	“	80		“ “ “	do
295	S ½ sw ¼	27	“	“	80		“ “ “	do
296	Ne ¼ sw ¼	27	“	“	40		“ “ “	do
297	Nw ¼ sw ¼	27	“	“	40		“ “ “	do
298	S ½ sw ¼ & sw ¼ se ¼	27	“	“	120		“ “ “	do
299	N ½ ne ¼	29	“	“	80		“ “ “	do
300	S ½ ne ¼ & se ¼ nw ¼	29	“	“	120		“ “ “	do
301	N ½ sw ¼ & W ½ se ¼	29	“	“	160		“ “ “	do
302	N ½ nw ¼ & sw ¼ nw ¼	29	“	“	118	20	“ “ “	do
303	Lot 1	31	“	“	39	70	“ “ “	do
304	Ne ¼ ne ¼ & s ½ ne ¼	31	“	“	120		“ “ “	do
305	N ½ ne ¼	33	“	“	80		“ “ “	do
306	W ½	33	“	“	320		“ “ “	do
307	S ½ ne ¼. n ½ se ¼ & se ¼ se ¼	33	“	“	200		“ “ “	do
308	Se ¼ ne ¼. ne ¼ se ¼ & se ¼ sw ¼	35	“	“	120		“ “ “	do
309	Sw ¼ nw ¼	35	“	“	40		“ “ “	do
310	Nw ¼ se ¼	35	“	“	40		St. P. & D. R. R. 20 miles	do
311	Se ¼ & sw ¼ ne ¼	35	“	“	200		“ sel 9/30/72 pat 6/6/75	do
312	E ½ ne ¼	35	“	“	80		“ “ “	do
313	Nw ¼ ne ¼	35	“	“	40		“ “ “	do
314	E ½ nw ¼	35	“	“	80		“ “ “	do
	Forward				25180	56		

North of Base Line and West of 4th Principal Meridian.
Northern Pacific Railroad.
List of Selections made at U. S. Land Office, Duluth, Minn.

	PART OF SECTION	Sec.	Town.	Range	AREA	REMARKS
					Acres 100ths	
		Ford.			25218.41	
315	Se ¼ se ¼	11	54	15	40	In lieu of
316	N ½ ne ¼ & sw ¼ ne ¼	15	"	"	120	"
317	Ne ¼ nw ¼	15	"	"	40	"
318	Nw ¼ nw ¼	15	"	"	40	"
319	S ½ nw ¼ & sw ¼	15	"	"	240	"
320	N ½ ne ¼	17	"	"	80	"
321	Nw ¼ nw ¼ & s ½ se ¼	17	"	"	120	"
322	N ½ ne ¼	19	"	"	80	"
323	Ne ¼ sw ¼	19	"	"	40	"
324	Lots 3, 5 & 8 nw ¼ se ¼	19	"	"	119.56	"
325	N ½ ne ¼ & sw ¼ ne ¼	21	"	"	120	"
326	Lots 1 & 3	21	"	"	52.50	"
327	Lots 4 & 5	21	"	"	55.10	"
328	E ½ sw ¼, sw ¼ sw ¼	21	"	"	120	"
329	Nw ¼ se ¼	21	"	"	40	"
330	Se ¼ ne ¼	23	"	"	40	"
331	Ne ¼ ne ¼	25	"	"	40	"
332	S ½ nw ¼	27	"	"	80	"
333	Ne ¼ sw ¼ & sw ¼ sw ¼	29	"	"	80	"
334	Ne ¼ nw ¼	31	"	"	40	"
335	Sw ¼ sw ¼	31	"	"	41.97	"
336	Sw ¼ se ¼	33	"	"	40	"
337	Lots 5, 6 & 7	15	55	15	115.20	"
338	E ½ ne ¼ & ne ¼ se ¼	17	"	"	120	"
339	E ½ ne ¼	19	"	"	80	"
340	Sw ¼ ne ¼ & se ¼ nw ¼	19	"	"	80	"
341	Lots 1 & 2	19	"	"	82.51	"
342	Lot 3	19	"	"	41.63	"
343	Ne ¼ sw ¼ & nw ¼ se ¼	19	"	"	80	"
344	E ½ se ¼ & sw ¼ se ¼	19	"	"	120	"
					484.14	
345	Ne ¼ ne ¼	21	"	"	40	"
346	W ½ ne ¼ & s ½ nw ¼	21	"	"	160	"
347	Lots 2 & 4	21	"	"	67.45	"
348	Lots 3, 6 & 8	21	"	"	53.94	"
349	N ½ sw ¼	21	"	"	80	"
350	N ½ ne ¼	23	"	"	80	"
351	S ½ nw ¼ & nw ¼ sw ¼	23	"	"	120	"
352	Sw ¼ nw ¼	25	"	"	40	"
353	E ½ sw ¼	25	"	"	80	"
		Ford.			28328.27	

PAGE CUT OFF

469 North of Base Line and West of 4th Principal Meridian. Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA Acres	AREA 100ths	REMARKS	Withdrawn from
	Ford				25180	56		
315	Sw ¼ nw ¼	35	52	17	40		St. P. & D. R. R. 20 miles Sel. 9/30/72 Pat 6/6/75	Duluth 17
316	N ½ sw ¼ & sw ¼ sw ¼	35	"	"	120		" " "	do
317	Se ¼ sw ¼	35	"	"	40		" " "	do
318	Lot 1	7	46	21	51	46	" " app'd 6/7 73	do
319	Se ¼ & n ½ sw ¼	29	47	21	240		" " "	do
320	S ½ sw ¼	29	"	"	80		" " "	do
321	E ½ sw ¼ & Lot 3	31	"	"	129	43	" " "	do
322	W ½ se ¼	31	"	"	80		" " "	do
323	Se ¼ se ¼	31	"	"	40		" " "	do
324	W ½ ne ¼ & ne ¼ nw ¼	33	"	"	120		" " "	do
325	Nw ¼ nw ¼ & s ½ nw ¼	33	"	"	120		" " "	do
326	Lot 1	31	"	"	49	89	" " "	do
327	Lot 4	31	"	"	49	21	" " "	do
328	N ½ sw ¼ & sw ¼ sw ¼	33	"	"	120		" " "	do
329	Se ¼ sw ¼	33	"	"	40		" " "	do
330	Sw ¼ se ¼	33	"	"	40		" " "	do
331	Ne ¼ ne ¼	35	"	"	40		" " "	do
332	W ½ ne ¼	35	"	"	80		" " "	do
333	Se ¼ ne ¼ & se ¼ nw ¼	35	"	"	80		" " "	do
334	Ne ¼ nw ¼	35	"	"	40		" " "	do
335	Nw ¼ nw ¼	35	"	"	40		" " "	do
336	Sw ¼ nw ¼	35	"	"	40		" " "	do
337	N ½ sw ¼ & sw ¼ sw ¼	35	"	"	120		" " "	do
338	E ½ se ¼ & sw ¼ se ¼	35	"	"	120		" " "	do
339	Se ¼ sw ¼ & nw ¼ se ¼	35	"	"	80		" " "	do
340	Ne ¼ ne ¼ & ne ¼ se ¼	15	45	22	80		" app'd 6/7/73	do
341	W ½ sw ¼	15	"	"	80		" "	do
342	Sw ¼ nw ¼	17	"	"	40		" "	do
343	Nw ¼ ne ¼ & nw ¼ sw ¼	21	"	"	80		" "	do
344	Se ¼ sw ¼ & s ½ se ¼	23	"	"	120		" "	do
345	Sw ¼ nw ¼	29	"	"	40		" "	do
346	Ne ¼	31	"	"	160		" "	do
347	E ½ nw ¼	31	"	"	80		" "	do
348	Lots 2 & 4	31	"	"	66	14	" "	do
349	Sw ¼ ne ¼ & Lot 1	1	46	22	80	07	" Sel 6/29/74 Pat 6/6/75	do
350	Lots 2 & 3	1	"	"	80	59	" " "	do
351	S ½ nw ¼ & nw ¼ sw ¼	1	"	"	120		" " "	do
352	Ne ¼ sw ¼	1	"	"	40		" " "	do
353	W ½ se ¼	1	"	"	80		" " "	do
					28327	35		

North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of Selections made at U. S. Land Office, Duluth, Minn.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
					Acres	100ths	
		Ford.			28328	27	
354	Lots 1 & 2	27	55	15	79		In lieu of
355	N ½ nw ¼ & se ¼ se ¼	27	"	"	120		"
356	Ne ¼ ne ¼, Lots 1 & 4	29	"	"	92		"
357	Ne ¼ nw ¼	29	"	"	40		"
358	W ½ nw ¼	29	"	"	80		"
359	Ne ¼ se ¼, Lots 8 & 9	29	"	"	90	90	"
360	Sw ¼ se ¼	31	"	"	40		"
361	Ne ¼ se ¼	35	"	"	40		"
362	Nw ¼ se ¼	35	"	"	40		"
363	Lots 1 & 2	1	53	16	77	83	"
364	S ½ se ¼ ex. app. sw ¼ se ¼	1	"	"	80		"
365	Lot 1 except	3	"	"	44	24	"
366	Ne ¼ se ¼	5	"	"	40		"
367	Ne ¼ sw ¼	3	54	16	40		"
	Lot 9 except	7	"	"	13		"
368	Sw ¼ nw ¼, Lots 1, 2 & 4 except 4	9	"	"	175	75	"
369	Sw ¼ se ¼ sw nw ¼ sw ¼ se ¼ Lots 1 & 2	9	"	"	40		"
370	Ne ¼, e ½ nw ¼ & sw ¼ nw ¼	11	"	"	280		"
371	N ½ se ¼	11	"	"	80		"
372	Ne ¼ nw ¼ & Lot 2	13	"	"	70	50	"
373	Nw ¼ sw ¼ & s ½ sw ¼ except	15	"	"	120		"
374	Se ¼ ne ¼ except	17	"	"	40		"
375	Lots 5 & 8 except	19	"	"	19	75	"
	Lot 2 except	29	"	"	18	25	"
376	Se ¼ nw ¼ Lots 2 & 3 except	21	"	"	102		"
377	Sw ¼ ne ¼ & nw ¼ se ¼	23	"	"	80		"
378	Se ¼ se ¼	23	"	"	40		"
379	Sw ¼ nw ¼	23	"	"	40		"
380	Ne ¼ ne ¼	25	"	"	40		"
381	N ½ ne ¼ & se ¼ ne ¼ execept	27	"	"	120		"
382	Ne ¼ nw ¼ except	27	"	"	40		"
383	S ½ nw ¼ except	27	"	"	80		"
384	Sw ¼ se ¼ except	27	"	"	40		"
385	E ½ ne ¼ except	33	"	"	80		"
386	W ½ ne ¼, se ¼ nw ¼ & nw ¼ se ¼ except	33	"	"	160		"
387	Ne ¼ se ¼ & s ½ se ¼ except	33	"	"	120		"
388	Nw ¼ se ¼	13	55	16	40		"
389	E ½ se ¼	13	"	"	80		"
390	E ½ se ¼ except	19	"	"	80		"
391	S ½ ne ¼	21	"	"	80		"
		Ford.			31311	49	

470 **North of Base Line and West of 4th Principal Meridian.**

Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS	With-drawn from
					Acres	100ths		
	Ford.				28327.35			
354	S ½ sw ¼	1	46	22	80		St. P. & D. R. R. 20 miles Sel. 6/29/74 Pat. 6/6/75	Duluth 17
355	N ½ ne ¼ & se ¼	11	"	"	120		" " "	do
356	Sw ¼ nw ¼ & sw ¼ sw ¼	11	"	"	80		" " "	do
357	Ne ¼ se ¼	11	"	"	40		" " "	do
358	N ½ ne ¼	13	"	"	80		" " "	do
359	W ½ nw ¼	13	"	"	80		" " "	do
360	Nw ¼ sw ¼	13	"	"	40		" " "	do
361	Sw ¼ sw ¼	13	"	"	40		" " "	do
362	Ne ¼ ne ¼	21	"	"	40		" " "	do
363	W ½ ne ¼	21	"	"	80		" " "	do
364	S ½ se ¼	21	"	"	80		" " "	do
365	Se ¼ ne ¼	21	"	"	40		" " "	do
366	Se ¼ sw ¼	21	"	"	40		" " "	do
367	Nw ¼ nw ¼	23	"	"	40		" " "	do
368	Se ¼	23	46	22	160		" " "	do
369	Sw ¼ nw ¼	23	"	"	40		" " "	do
370	Ne ¼, e ½ nw ¼ & nw ¼ nw ¼	25	"	"	280		" " "	do
371	Sw ¼ nw ¼ & nw ¼ sw ¼	25	"	"	80		" " "	do
372	S ½ sw ¼	25	"	"	80		" " "	do
373	Ne ¼ sw ¼ & w ½ se ¼	25	"	"	120		" " "	do
374	Ne ¼ se ¼	25	"	"	40		" " "	do
375	Se ¼ se ¼	25	"	"	40		" " "	do
376	Ne ¼ se ¼ & s ½ se ¼	27	"	"	120		" " "	do
377	Nw ¼ ne ¼ & nw ¼ nw ¼	27	"	"	80		" " "	do
378	Nw ¼ sw ¼	27	"	"	40		" " "	do
379	Se ¼ sw ¼	23	"	"	40		" " "	do
380	Ne ¼ ne ¼	29	"	"	40		" " "	do
381	Nw ¼ ne ¼ & n ½ nw ¼	29	"	"	120		" " "	do
382	Sw ¼ nw ¼	29	"	"	40		" " "	do
383	S ½ sw ¼	29	"	"	80		" " "	do
384	Ne ¼ ne ¼	33	"	"	40		" " "	do
385	N ½ nw ¼	33	"	"	80		" " "	do
386	Sw ¼	33	"	"	160		" " "	do
387	N ½ se ¼ & sw ¼ se ¼	33	"	"	120		" " "	do
388	Se ¼ se ¼	33	"	"	40		" " "	do
389	N ½ ne ¼	35	"	"	80		" " "	do
390	S ½ ne ¼	35	"	"	80		" " "	do
391	N ½ nw ¼	35	"	"	80		" " "	do
	Ford.				31287.35			

North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of Selections made at U. S. Land Office, Duluth, Minn.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
					Acres	100ths	
		Ford.			31311	49	
392	Nw ¼ nw ¾	21	55	16	40		In lieu of
393	S ½ nw ¼ & n ½ sw ¼	21	"	"	160		"
394	Lot 1	21	"	"	23		"
395	Lot 2	21	"	"	34		"
396	N ½ ne ¼	23	"	"	80		"
397	Se ¼ ne ¼	23	"	"	40		"
398	Ne ¼ nw ¼	23	"	"	40		"
399	Se ¼ sw ¾	23	"	"	40		"
400	S ½ se ¼	23	"	"	80		"
401	Nw ¼ ne ¼ & n ½ nw ¼	25	"	"	120		"
402	N ½ ne ¼ & sw ¼ ne ¼	27	"	"	120		"
403	Nw ¼	27	"	"	160		"
404	~~Lots 1 & 2~~	29	"	"	65	75	"
405	Lots 3 & ~~10~~ Lots 3 & 8, ne sw ¾ except	29	"	"	33		"
406	Lots 7 & 8	29	"	"	78		"
407	Ne ¾ sw ¼	29	"	"	40		"
408	Se ¼ se ¼ & Lot 3	33	"	"	76	25	"
409	Lots 3 & 6	35	"	"	55	50	"
410	Ne ¼ se ¼	35	"	"	40		"
411	Se ¼ se ¼	35	"	"	40		"
		Total............			32676	99	acres

471 North of Base Line and West of 4th Principal Meridian. Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS	With-drawn from
				Acres	100ths		
Ford.				31287.35			
392 Sw ¼ nw ¼	35	46	22	40		St. P. & D. R. R. 20 miles Sel, 6/29/74 Pat. 6/6/75	Duluth 17
393 Sw ¼	35	"	"	160		" " "	do
394 Se ¼ nw ¼	35	"	"	40		" " "	do
395 Nw ¼ se ¼	35	"	"	40		" " "	do
396 E ½ se ¼	35	"	"	80		" " "	do
397 Lot 1	1	47	22	38.64		" Sel. 9/30/72 App'd 6/7/73	do
398 Se ¼ ne ¼	1	"	"	40		" Sel. 9/30/72 App'd 6/7/73	do
399 Ne ¼ se ¼	1	"	"	40		" " "	do
400 N ½ ne ¼	13	"	"	80			do
401 S ½ ne ¼ & ne ¼ nw ¼	13	"	"	120		" " "	do
402 Se ¼ nw ¼ & n ½ sw ¼	13	"	"	120		" " "	do
403 S ½ sw ¼ & s ½ se ¼	13	"	"	160		" " " " " "	do
404 N ½ se ¼	13	"	"	80		" " "	do
405 Ne ¼ ne ¼	23	"	"	40		" " "	do
406 S ½ ne ¼	23	"	"	80		" " "	do
407 Nw ¼ se ¼	35	"	"	40			do
408 Sw ¼ se ¼ & ne ¼ se ¼	35	"	"	80		" " " " " "	do
409 se ¼ ne ¼	33	51	13	40		C. E. 255 Sept. 19/68 Pat.	do
410 Lot 2	19	49	13	32.50		P. E. 198 Aprl 11/67	do
411 Nw ¼ se ¼	7	51	15	40		St. P. & D. R. R. 20 miles App'd Mch 25/68	do
Total				32678.49 acres			

For certificate see Original List on file with Commissioner General Land Office.

472 COMPLAINANTS' EXHIBIT No. 24.—Being Northern Pacific Selection List No. 16, dated Oct. 18, 1883. Offered in evidence at page 211, this record.

473 Entered on Plats & Tract Books as per F April 17, 1897. (K.)

N. P. R. R.

List of Selections
No 16
Duluth District.

~~Land Department~~
~~Northern Pacific Railroad Company.~~
~~List No. 16 (2nd Indemnity)~~
~~of selections of public lands made by the~~
~~Northern Pacific Railroad Company~~
~~as enuring to it under grants of July 2, 1864,~~
~~and May 31, 1870, in the~~
~~Duluth, U. S. Land District.~~
~~Minnesota.~~
~~Approved Nov. 9th, 1883.~~

Chec-ed on Plats and compared.
Entered on plats and Tract Books Oct. 18/1883.
J. R. CAREY, Register.
Miller.
Triplicate.

Reinstated and entered on Tract Books as per instructions in F. July 12, 1900. (K)

474 Land Department Northern Pacific Railroad Company.
List No. 16.

State of Minnesota, U. S. Land Office at Duluth.
Oct. 17th, 1883.

The Northern Pacific Railroad Company, under and by virtue of the act of Congress, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the northern route," approved July 2nd, 1864, and "A resolution authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road, and to secure the same by mortgage, and for other purposes," approved May 31st, 1870, and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said company, as enuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Act of Congress and the location of the line of route of the railroad of the said Company; being for a section of...... miles of the same commencing at .... and ending ....The selection being particularly described as follows, to wit:

North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

PART OF SECTION	Sec.	Town.	Range	AREA Acres 100ths	REMARKS
~~Sw ¼ ne ¼ & e ½ sw ¼ & sw ¼ sw ¼~~	19	54	9	122	
~~Lots 2-3-4 & s ½ nw ¼~~	27	"	"	181.70	
~~Se ¼ nw ¼ & ne ¼ sw ¼~~	31	"	"	80	
~~Lot 3~~	33	"	"	42.80	
~~Lots 1 & 2~~	5	53	9	37.30	
~~N ½ & sw ¼ & w ½ se ¼ & ne ¼ se ¼~~	3	53	10	587.60	
~~Whole~~	5	"	"	626.04	
~~N ½~~	9	"	"	320	
~~Sw ¼ ne ¼~~	3	54	10	40	
~~Se ¼ nw ¼~~	33	55	10	40	
~~S ½ sw ¼~~	7	55	11	79.61	
~~Se ¼ nw ¼~~	23	"	"	40	
~~S ½ ne ¼ & se ¼ nw ¼ & Lot 2~~	11	55	12	147.50	
~~Nw ¼ sw ¼ & se ¼ sw ¼ & n ½ se ¼~~	1	55	13	160	
~~Sw ¼ nw ¼~~	5	"	"	40	
~~Lots 1 & 4~~	1	55	14	78.96	
~~S ½ ne ¼~~	5	"	"	80	
~~Sw ¼ se ¼~~	3	55	15	40	
~~S ½ sw ¼~~	7	"	"	80.18	
~~Sw ¼ nw ¼ & n ½ sw ¼~~	9	"	"	120	
~~Lots 1-9-10~~	11	"	"	116.28	
~~S ½ ne ¼ & sw ¼ nw ¼ & n ½ sw~~ ¼	13	55	16	200	
~~S ½ sw ¼~~	15	"	"	80	
~~S ½ of n ½~~	17	"	"	160	
S ½ ne ¼ & Lots 1-2-3-4 se ¼ sw ¼	13	55	17	239.50	Stet.
W ½ se ¼ & se ¼ se ¼	13	"	"	120	Stet.
Lots 1 & 2 & n ½ nw ¼	23	"	"	157.20	Stet.
~~Lots 1 & 2~~	29	54	13	68.10	
~~Nw ¼ sw ¼~~	31	55	"	41.50	
~~Ne ¼ sw ¼~~ ne sw	31	54	16	40	Stet.
Lot 4	35	55	16	32.75	Stet.
				4199.02	

475 North of Base Line and West of 4th Principal Meridian.

Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

PART OF SECTION	Sec.	Town.	Range	AREA Acres	 100ths	REMARKS
Whole	1	48	21	632.16		
S ½ ne ¼ & s ½ sw ¼ & ne ¼ sw ¼ & se ¼	11	"	"	360		
Lots 5 & 6	3	"	"	79		
Ne ¼ ne ¼ & sw ¼ & s ½ se ¼	13	"	"	280		
N ½ of n ½ & se ¼ ne ¼ & s ½ se ¼	15	"	"	280		
Sw ¼ & sw ¼ se ¼	23	"	"	200		
Se ¼ ne ¼ & s ½ sw ¼ & n ½ se ¼ & se ¼ se ¼	21	"	"	240		
Sw ¼ nw ¼ & nw ¼ sw ¼	25	"	"	80		
E ½ ne ¼ & sw ¼ nw ¼ & s ½ sw ¼ & sw ¼ se ¼	27	"	"	240		
Sw ¼ sw ¼ & sw ¼ se ¼ & e ½ se ¼	29	"	"	160		
Ne ¼ ne ¼ & sw ¼ se ¼	31	"	"	80		
E ½ ne ¼ nw ¼ nw ¼ se ¼ of nw ¼ & sw ¼	33	"	"	320		
S ½ se ¼	33	"	"	80		
E ½ ne ¼ sw ¼ ne ¼ sw ¼ of sw ¼, ne ¼ of se ¼	25	49	21	200		
Ne ¼ ne ¼ & e ½ sw ¼	35	49	21	120		
Lots 2 & 4 & s ½ nw ¼ & w ½ sw ¼	1	45	22	159.50		
Se ¼ sw ¼ & s ½ se ¼	1	"	"	120		
Se ¼ se ¼ & Fr'ct n ½	3	"	"	357.82		
E ½ ne ¼ & sw ¼ ne ¼	5	"	"	119.79		
Ne ¼ ne ¼ & Lots 1 & 2	19	"	"	103.23		
				4211.50		

476 State of Minn.,
County of Ramsey—ss.

I, Chas. B. Lamborn, being duly sworn, depose and say, that I am the Land Commissioner of the Northern Pacific Railroad Company; that the foregoing list of lands, which I hereby select, is a correct list of a portion of the public lands claimed by the said Northern Pacific Railroad Company as enuring to said Company, to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the northern route, for which a grant of land was made by the Act of Congress approved July 2nd, 1864, and the Joint Resolution approved May 31st, 1870; that the said lands are vacant, unappropriated, and are not interdicted mineral or reserved lands, and are of the character contemplated by the grant, being within the limits of forty miles on each side of the line of route for a continuous distance of ...... miles, being a portion of the lands for a section of ...... miles of said railroad, commencing .... and ending ....

CHAS. B. LAMBORN. [L. S.]

Sworn and subscribed before me this 14th day of August, 1883.

Copy

GEO. W. BOARD, [Seal]
Notary Public, Ramsey Co., Minn.

United States Land Office,
Duluth, Minn., Nov. 9th, 1883.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Northern Pacific Railroad Company, under the grant to the said company, by Act of Congress approved July 2nd, 1864, and Joint Resolution approved May 31st, 1870, and selected by said Northern Pacific Railroad Company by Chas. B. Lamborn, the duly authorized agent and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved and that the whole of said lands are surveyed public lands of the United States, and within the limits of forty miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or any other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress approved July 1st, 1864, and contemplated by the circular of instructions dated Jan. 24th, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said company have paid to the undersigned, the Receiver the full sum of Fifty-two (52) Dollars, in full payment and discharge of said fees.

J. R. CAREY, Register.
W. W. SPALDING, Receiver.

477 COMPLAINANTS' EXHIBIT No. 25.—Being Northern Pacific Selection List No. 16, dated April 11, 1893; Offered in evidence at page 211, this record.

478 For office
P. & T. B. 6/6/93

Form L. D. 153.

Filed .... 189 Approved 189

Re-arranged Indemnity Selection List
Selections and Losses
Tract for Tract

Land Department
Northern Pacific Railroad Co.
List No. 16 (2nd Indemnity)
of selections of public lands made by the
Northern Pacific Railroad Company
as enuring to it under grants of July 2, 1864,
and May 31, 1870, in the
Duluth U. S. Land District.
Minnesota.

Filed U. S. Land Office, Duluth, Minn., April 11, 1893.
MONROE NICHOLS, Register.

Duplicate transmitted
Aug. 28, 1894.
Checked

479 Land Department Northern Pacific Railroad Company.

List No. 16 (2nd Indemnity)

State of Minnesota, U. S. Land Office at Duluth.

Whereas, the Northern Pacific Railroad Company has heretofore, to wit, on the 9th day of November, 1883, duly selected under the directions of the Secretary of the Interior, those certain tracts and parcels of land particularly set forth and described in Duluth, List No. 16 filed in the United States District Land Office at Duluth, Minnesota, on the 9th day of November, 1883, as indemnity for certain tracts and parcels of odd numbered sections of land within the place limits of the grant to said railroad company, which said tracts were reserved, sold, granted, or otherwise appropriated, or not free from pre-emption or other claims or rights, at the time the line of its road was definitely located, in accordance with the provisions of the Act of Congress, approved July 2nd, 1864; and of the Joint Resolution of Congress, approved May 31st, 1870; which lands so selected are on and within forty miles of the line said road as so definitely located;

And, Whereas, the Secretary of the Interior has, since the filing of the said above described list further directed that the said list shall be rearranged so it shall indicate the specific loss in lieu of which each specific selection has been made;

Now, Therefore, to comply with the further requirements of the Interior Department, but not waiving or abandoning any rights or claims heretofore acquired by virtue of its selections heretofore made under the directions of the Secretary of the Interior, the said Northern Pacific Railroad Company has herein designated the lands heretofore selected as indemnity in said Duluth List No. 16 and no other lands, and has herein set opposite each specific description of land so selected the description of the land lost from its grant in place, and in lieu of which such indemnity land is selected.

CHAS. B. LAMBORN,
Land Commissioner,
Northern Pacific Railroad Company.

St. Paul, Minn., April 10th, 1893.

North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of Selections made at U. S. Land Office, Duluth, Minn.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
					Acres	100ths	
1	Lots 1 & 2	5	53	9	37	.30	In lieu of
2	Sw ¼ ne ¼	19	54	9	40		"
3	E ½ sw ¼	"	"	"	80		"
4	Sw ¼ sw ¼	"	"	"	42		"
5	Lots 2, 3 & 4	27	"	"	101	.70	"
6	S ½ nw ¼	"	"	"	80		"
7	Se ¼ nw ¼	31	"	"	40		"
8	Ne ¼ sw ¼	"	"	"	40		"
9	Lot 3	33	"	"	42	.80	"
10	N ½ se ¼	3	53	10	80		"
11	Sw ¼ se ¼	"	"	"	40		"
12	N ½ ne ¼	"	"	"	73	.80	"
13	S ½ ne ¼	"	"	"	80		"
14	Nw ¼	"	"	"	153	.80	"
15	N ½ sw ¼	"	"	"	80		"
16	Sw ¼ sw ¼	"	"	"	40		"
17	Se ¼ sw ¼	"	"	"	40		"
18	Ne ¼	5	"	"	152	.85	"
19	N ½ nw ¼	"	"	"	73	.19	"
20	S ½ nw ¼	"	"	"	80		"
21	N ½ sw ¼	"	"	"	80		"
22	S ½ sw ¼	"	"	"	80		"
23	Ne ¼ se ¼	"	"	"	40		"
24	Nw ¼ se ¼	"	"	"	40		"
25	S ½ se ¼	"	"	"	80		"
26	N ½ ne ¼	9	"	"	80		"
27	Sw ¼ ne ¼	"	"	"	40		"
28	Se ¼ ne ¼	"	"	"	40		"
29	Nw ¼	"	"	"	160		"
30	Sw ¼ ne ¼	3	54	10	40		"
31	Se ¼ nw ¼	33	55	10	40		"
32	S ½ sw ¼	7	55	11	79	.61	"
33	Se ¼ nw ¼	23	"	"	40		"
34	S ½ ne ¼	11	"	12	80		"
35	Se ¼ nw ¼	"	"	"	40		"
36	Lot 3	"	"	"	27	.50	"
	Lots 1 & 2	29	54	13	68	.10	"
37	Nw ¼ sw ¼	1	55	13	40		"
38	Se ¼ sw ¼	"	"	"	40		"
39	N ½ se ¼	"	"	"	80		"
40	Lot 3	31	"	"	41	.50	"
41	Sw ¼ nw ¼	5	"	"	40		"
42	Lot 1 & 4	1	55	14	78	.96	"
		Forward			2773	.11	

480 North of Base Line and West of 4th Principal Meridian.

Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA		REMARKS
					Acres	100ths	
1	Lot 1	1	48	21	39	51	St. P. & D. R. R. 20 miles. Pat. 6/6/75
2	Lot 2	"	"	"	38	53	"
3	Lots 3 & 4	"	"	"	74	12	"
4	Sw ¼ ne ¼	"	"	"	40		"
5	Se ¼ ne ¼—s ½ nw ¼	"	"	"	120		"
6	N ½ se ¼	"	"	"	80		"
7	Sw ¼ se ¼	"	"	"	40		"
8	Se ¼ se ¼	"	"	"	40		"
9	Ne ¼ sw ¼	"	"	"	40		"
10	S ½ sw ¼	"	"	"	80		"
11	Nw ¼ sw ¼	"	"	"	40		"
12	Lots 5 & 6	3	"	"	79	50	"
13	S ½ ne ¼	11	"	"	80		"
14	Se ¼	"	"	"	160		"
15	S ½ sw ¼	"	"	"	80		"
16	Ne ¼ sw ¼	"	"	"	40		"
17	Ne ¼ ne ¼	13	"	"	40		"
18	Sw ¼	"	"	"	160		"
19	S ½ se ¼	"	"	"	80		"
20	N ½ ne ¼	15	"	"	80		"
21	N ½ nw ¼	"	"	"	80		"
22	S ½ se ¼	"	"	"	80		"
23	Se ¼ ne ¼	"	"	"	40		"
24	Se ¼ se ¼	21	"	"	40		"
25	N ½ se ¼	"	"	"	80		"
26	S ½ sw ¼	"	"	"	80		"
27	Se ¼ ne ¼	"	"	"	40		"
28	Sw ¼ se ¼	23	"	"	40		"
29	Sw ¼	"	"	"	160		"
30	Sw ¼ nw ¼	25	"	"	40		"
31	Nw ¼ sw ¼	"	"	"	40		"
32	E ½ ne ¼	27	"	"	80		"
33	Sw ¼ nw ¼	"	"	"	40		"
34	S ½ sw ¼	"	"	"	80		"
35	Sw ¼ se ¼	"	"	"	40		"
36	E ½ se ¼	29	"	"	80		"
37	Sw ¼ sw ¼	"	"	"	40		"
38	Sw ¼ se ¼	"	"	"	40		"
39	Ne ¼ ne ¼—sw ¼ se ¼	31	"	"	80		"
40	Ne ¼ ne ¼	33	"	"	40		"
41	Se ¼ ne ¼	"	"	"	40		"
42	S ½ se ¼	"	"	"	80		"
	Forward				2791	66	

North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of selections made at U. S. Land Office, Duluth, Minn.

	PART OF SECTION	Sec.	Town.	Range	AREA Acres	AREA 100ths	REMARKS
		Forward			2773	.11	
43	Nw ¼ nw ¼—se	5	55	14	80		In lieu of
44	Sw ¼ se ¼	3	55	15	40		"
45	Lot 4	7	"	"	40	.18	"
46	Se ¼ sw ¼	"	"	"	40		"
47	Sw ¼ nw ¼	9	"	"	40		"
48	N ½ sw ¼	"	"	"	80		"
49	Lots 1-9 & 10	11	"	"	116	.28	"
50	Ne ¼ sw ¼	31	54	16	40		"
51	S ½ ne ¼	13	55	16	80		"
52	Sw ¼ nw ¼	"	"	"	40		"
53	N ½ sw ¼	"	"	"	80		"
54	S ½ sw ¼	15	"	"	80		"
55	Sw ¼ sw ¼	17	"	"	40		"
56	Se ¼ sw ¼	"	"	"	40		"
57	Sw ¼ se ¼	"	"	"	40		"
58	Se ¼ se ¼	"	"	"	40		"
59	Lot 4	35	"	"	32	.75	"
60	Lots 1 & 4	13	55	17	48	.50	"
61	Lot 3	"	"	"	32		"
62	Lot 2	"	"	"	39		"
63	S ½ ne ¼	"	"	"	80		"
64	S ½ se ¼	"	"	"	80		"
65	Nw ¼ se ¼	"	"	"	40		"
66	Se ¼ sw ¼	"	"	"	40		"
67	Lot 1	23	"	"	37	.25	"
68	Lot 2	"	"	"	39	.95	"
69	N ½ nw ¼	"	"	"	80		"
		Total...........			4239	.02	acres.

481 North of Base Line and West of 4th Principal Meridian.

Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

	PART OF SECTION	Sec.	Town.	Range	AREA Acres	AREA 100ths	REMARKS
	Forward				2791	.66	
43	Nw ¼ nw ¼—se ¼ nw ¼	33	48	21	80		St. P. & D. R. R. 20 miles Pat. 6/6/75
44	Ne ¼ sw ¼	"	"	"	40		"
45	Nw ¼ sw ¼	"	"	"	40		"
46	Sw ¼ sw ¼	"	"	"	40		"
47	Se ¼ sw ¼	"	"	"	40		"
48	E ½ ne ¼	25	49	21	80		"
49	Sw ¼ ne ¼—sw ¼ sw ¼ & ne ¼ se ¼	"	"	"	120		"
50	Ne ¼ ne ¼	35	"	"	40		"
51	E ½ sw ¼	"	"	"	80		"
52	Lot 2	1	45	22	39	.85	St. P. & D. R. R. 20 miles App'd 6/7/73
53	S ½ nw ¼	"	"	"	80		"
54	W ½ sw ¼	"	"	"	80		"
55	Lot 4	"	"	"	39	.65	"
56	Se ¼ sw ¼	"	"	"	40		"
57	Sw ¼ se ¼	"	"	"	40		"
58	Se ¼ se ¼	"	"	"	40		"
59	Lot 1	19	"	"	31	.93	"
60	Ne ¼ ne ¼	"	"	"	40		"
61	Lot 2	"	"	"	32	.20	"
62	Se ¼ se ¼	3	"	"	40		"
63	S ½ ne ¼	"	"	"	80		"
64	S ½ nw ¼	"	"	"	80		"
65	Lot 1	"	"	"	39	.71	"
66	Lot 2	"	"	"	39	.54	"
67	Lot 3	"	"	"	39	.37	"
68	Lot 4	"	"	"	39	.20	"
69	E ½ ne ¼	5	"	"	79	.79	"
	Total				4252	.90 acres	

For certificate see original List on file with Commissioner General Land Office.

482 COMPLAINTS' EXHIBIT 26.—Offered in evidence at page 212, this record.

FOLD OUT IS TOO LARGE TO BE FILMED

483 **COMPLAINANTS' EXHIBIT 29.**—Offered in evidence at page 215, this record:

1896—129169. W. J. M.

S. S. M.
F.

Department of the Interior.
General Land Office.
Washington, D. C., *January 22, 1897.*

Register and Receiver,
Duluth, Minnesota.

Sirs: On August 29, 1896, (23 L. D. 204) the Secretary of the Interior rendered a decision, wherein he held .... the
493 eastern terminus or the initial point on Lake Superior of the Northern Pacific Railroad grant by Act of July 2, 1864, to be at the city of Duluth, Minnesota.

Thereupon, this office prepared a diagram showing the eastern terminal of said grant which received the approval of the Secretary on December 24, 1896.

An abstract of said diagram showing so much of said terminal as affects lands in your district is herewith enclosed for the use and guidance of your office.

Very respectfully,
S. W. LAMOREUX,
Commissioner.

EXHIBIT No. 30.—Offered in evidence at page 215, this record:

United States Land Office.

Duluth, Minn., July 29, 1897.

Notice.

Of restoration to the United States of a part of the Land Grant of the Northern Pacific Railroad Company.

On August 27, 1896 (23 L. D. 204) the Secretary of the Interior rendered a decision wherein he held that the initial point on Lake Superior, or the eastern terminus of the grant to the Northern Pacific Railroad Company was at Duluth, Minnesota, and on December 24, 1896, he approved a diagram prepared by the Commissioner of the General Land Office showing the eastern terminal of the grant A copy of so much of said diagram as related to or affected lands within the Duluth Land District is now on file in this office. The decision of the Secretary aforesaid had the effect of restoring to the public domain the lands previously withdrawn on account of the grant to the N. P. Ry. Co., and lying east of the terminal established at Duluth, more particularly described as follows:

494.

Tp.	R.	Tp.	R.	Tp.	R.	Tp.	R.	
54	9							
53	10	51	12	50	13	51	14	except Sec. 31
54	10							
55	10	52	12	51	13	52	14	
52	11			52	13	54	14	
53	11	53	12	53	13	55	14	
54	11	54	12	54	13	54	15	
55	11	55	12	55	13	55	15	

Lands in Sections 1, 3, 5, 9, 11, 13, 15, 23, in Tp. 50 N. R. 14 W.
" " " 1 Tp. 51 R. 15 W.
" " " 1, 3, 9, 11, 13, 15, 23, 25, 35, Tp. 52 N., R. 15.
" " " 1, 3, 5, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 33 & 35 in Tp. 53 N. R. 15 W.
" " " 1 Tp. 53 N. R. 16 W.
" " " 1, 3, 11, 13, 15, 23, 25, Tp. 54 R. 16.
" " " 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 33 and 35, Tp. 54 N., R. 16.
" " " 1 Tp. 55 N. R. 17 W.

These lands are now subject to disposal at this office. All persons interested in or having claims to any of these lands, and especially all persons claiming rights under the provisions of the Act of March 3, 1887 (24 Stat. 556) through purchase from the Railroad Company are hereby notified that they should present their claims to said lands at this office at the earliest possible date in order to avoid conflicts which will necessarily arise through entries made under the general land laws.

(Signed) A. J. TAYLOR, Register.
(Signed) F. L. RYAN, Receiver.

F. W. J. M.
S. S. M. Department of the Interior.

General Land Office.
Washington, D. C., July 17, 1897.

Register and Receiver,
Duluth, Minn.

Sirs: On August 27, 1896 (23 L. D. 204) the Secretary of the Interior rendered a decision wherein he held that the initial point on Lake Superior or the eastern terminus of the 495 grant to the Northern Pacific Railroad Company was at Duluth, Minnesota, and on December 24, 1896, he approved a diagram prepared by this office showing the eastern terminal of the grant.

On January 22, 1897, a copy of so much of said diagram as related to, affected lands within, your district, was transmitted to you for the use, and guidance of your office.

The decision of the Secretary aforesaid had the effect of restoring to the public domain all lands lying east of said terminal which had theretofore been withdrawn on account of the grant to said railroad company. Therefore, to the end that all persons interested may have opportunity to present any claims they may have to any of these lands, you will cause to be published for the period of thirty days in some newspaper of general circulation in their vicinity, a notice referring to said Secretary's decision which in effect declared that all lands previously withdrawn on account of the grant to the Northern Pacific Railroad Company [any] and lying east of the terminal established at Duluth, are restored to the public domain and are subject to disposal at your office. It should be specifically stated in said notice that all persons claiming rights, under the provisions of the Act of March 3, 1887 (24 Stat. 556) through purchase from the railroad company should come forward and assert their claims at the earliest possible date in order to avoid conflicts [will] will necessarily arise through entries made under the general land laws, your office having no information as to the tracts likely to be claimed under said act.

The receiver as disbursing officer, will pay the cost of the publication and forward a copy of the notice, with proof of publication as his voucher for the disbursement.

Very respectfully,
BINGER HERMANN,
Commissioner.

Approved: C. N. Bliss.
Secretary of the Interior.

496 1897—67297. W. J. M.

Department of the Interior.

General Land Office.
Washington, D. C., July 22, 1897.

Register and Receiver,
Duluth, Minnesota.

Sirs: I enclose herewith instructions, addressed to you, approved by the Secretary of the Interior on July 17, 1897, directing that thirty days public notice be given by publication in some newspaper of general circulation in their vicinity, that all lands previously withdrawn on account of the grant to the Northern Pacific Railroad Company and lying east of the terminal established at Duluth, Minnesota, are restored to the public domain, and that those lying within your district are subject to disposal at your office. You will proceed to carry said instructions into effect in the manner indicated therein, and you will advise this office of your action.

Very respectfully,
BINGER HERMANN,
Commissioner.

EXHIBIT No. 31.—Offered in evidence at page 215, this record:

List 10, 1st Indemnity. S. S. M.
W. K. M. G. F. P.
F. J. V. W.

Department of the Interior.

General Land Office,
Washington, D. C., July 12, 1900.

Register & Receiver,
Duluth, Minn.

Sirs: Under the decision of the Department of Octo-
497 ber 29, 1896 (23 L. D. 428) and by letter to you of April
17, 1897, all the selections (first indemnity) made by the Northern Pacific Railroad (now railway) Company per list 10 of your office series, were canceled because the lands were outside of the terminal limits of the grant to the Company as fixed by the Department at Duluth, excepting certain tracts

specified in said letter of cancellation, which were within the limits of the grant as thus established, and you were directed to note such cancellation on your records.

The U. S. Supreme Court, however, in the case of Andrew Doherty v. Northern Pacific Railway Co. and U. S. v. said Company handed down its decisions on April 16, 1900 wherein it is held that the terminus of the grant to the company is at Ashland, Wisconsin.

The cancellation, therefore, of the company's selections above referred to, was erroneous and is hereby rescinded and the selections restored to the records, which fact you will please note on your records.

The selections will now be duly considered upon their legality otherwise and in connection with any conflicting claims or rights.

Very respectfully,
W. A. RICHARDS,
Assist. Commissioner.

B. W. M.

EXHIBIT No. 32: Offered in evidence at page 215 this record:

List 16, Second Indemnity. S. S. M.
List 20, In place. G. F. P.
W. K. M. J. V. W.
F. Department of the Interior,

General Land Office,
Washington, D. C., July 12, 1900.

Register & Receiver,
Duluth, Minnesota.

Sirs: Under the decision of the Department of October
498 29, 1896 (23 L. D. 428) and by letter to you of
April 17, 1897, all the Selections (second indemnity) made by the Northern Pacific Railroad (now railway) Company per list 16 of your office series, were canceled because the lands were outside of the terminal limits of the grant to the company as fixed by the Department at Duluth, excepting certain tracts specified in said letter of cancellation, which were within the limits of the grant as thus established and you were directed to note such cancellation on your records.

By same letter and for the same reasons List No. 20 of lands" in place was also canceled.

The U. S. Supreme Court, however, in Andrew Doherty v. Northern Pacific R. R. Co. and U. S. v. said Company handed down its decisions, on April 16, 1900, wherein it is held that the terminus of the grant to the company is at Ashland, Wisconsin.

The cancellation, therefore, of the company's selections and listing above referred to was erroneous and is hereby rescinded and the selections restored to the records, which fact you will please note on your records.

The selections and listing will now be duly considered, upon their legality otherwise, and in connection with any conflicting claims or rights.

Very respectfully,
W. A. RICHARDS,
B. W. M. Assist. Commissioner.

EXHIBIT No. 33: Offered in evidence at page 215, this record:

List 9, in place. S. S. M.
499 W. K. M. G. F. P.
F. J. V. W.

Department of the Interior,

General Land Office,
Washington, D. C., July 12, 1900.

Register & Receiver,
Duluth, Minn.

Sirs: Under departmental decision of October 29, 1896, (23 L. D., 428) list No. 9 of lands listed by the Northern Pacific Railroad (now railway) Company was canceled by office letter of March 25, 1897, to the extent of the tracts embraced therein which lay east of the terminal of the grant as fixed by the Department at Duluth and you were directed to note such cancellation on your records.

The U. S. Supreme Court, however, in the case of Andrew Doherty v. Northern Pacific Ry. Company and U. S. v. said company handed down its decisions on April 16, 1900, wherein it is held that the terminus of the grant to the company is at Ashland, Wisconsin.

The cancellation, therefore, of the company's listing above referred to was erroneous and is hereby rescinded, and the listings restored to the records, which fact you will please note on your records.

Said list 9 will now be duly considered upon its legality otherwise and in connection with any conflicting claims or rights. Very respectfully,
W. A. RICHARDS,
B. W. M. Asst. Commissioner.

500 Exhibit No. 34: Duly certified. Offered in evidence at page 220, this record:

946- '97. Department of the Interior, J. I. P.
L. R. R. Div. Washington,
February 25, 1897.

The President of the Senate:

Sir: On the 19th instant the Senate forwarded to this Department the following resolution:

Resolved, that the Secretary of the Interior be, and he is hereby, requested to furnish, for the information of the Senate, a statement as to what deficiency, if any, existed in the grant to the Northern Pacific Railroad Company under Acts of Congress of July 2, 1864, and May 31, 1870, at the date of the various definite locations of said road."

In response to that resolution I have the honor to hand you herewith a report from the Acting Commissioner of the General Land Office which contains the information desired.

Very respectfully,
D. R. FRANCIS, Secretary.

501 EXHIBIT No. 35:—Duly certified. Offered in evidence at page 220, this record:

Duplicate.

F. 1897-18448. W. J. M.

Department of the Interior,

S. S. M. General Land Office,
Washington, D. C., February 23, 1897.

Address only the
Commissioner of the General Land Office.

The Honorable, the Secretary of the Interior:

Sir: I return, herewith, Senate Resolution received with your communication of the 19th instant, calling for information as to what deficiency, if any, existed in the grant to the Northern Pacific Railroad Company, under acts of Congress of July 2, 1864, and May 31, 1870, at the dates of the various definite locations of said road.

Responding thereto, I have the honor to report that the records of this office show that the total area of lands excepted from and lost to said grant within its primary limits at the several dates of definite location of said Northern Pacific Railroad amounts to 10,624,746.27 acres, of which 2,887,086.57 acres were lost subsequent to the date of the Act of Congress making said original grant; that there were at the several dates of definite location, within the first indemnity limits

of said grant, not to exceed 7,177,769.71 acres available for selection to satisfy said total acre of lands excepted from and lost to said grant within its primary limits, thus leaving a deficiency of 3,446,976.56 acres, only 2,887,086.57 of which can be satisfied within the second indemnity limits, under the provisions of the Joint Resolution of Congress of May 31, 1870, above referred to, thus leaving at the dates of definite
502 location an ascertained deficiency in the entire grant of over 559,889.99 acres.

Very respectfully,
E. F. BEST,
KBW. Acting Commissioner.

Exhibit No. 36. Duly certified. Offered in evidence at page 221, this record:

S. S. M.
W. O. C.
J. V. W.

13-12607.

W. P. J. Department of the Interior.

General Land Office,
Washington, D. C., June 7th, 1900.

Address only the Commissioner of the General Land Office.

The Honorable the Secretary of the Interior:

Sir: In conformity with the directions of the Department (6 L. D., 276), and the requirements of the act of March 3, 1887 (24 Stat., 556), an examination, with a view to its adjustment, has been made of the grant for the Northern Pacific Railway Company in the State of Minnesota under act of July 2, 1864 (13 Stat., 365), and I herewith submit a full statement of the results of such examination.

The examination as first made covered only that part of the grant west of the terminal limit established by Departmental decision of August 27, 1896 (23 L. D., 204), but since the decision of the Supreme Court of April 16, 1900, in United States v. Northern Pacific Railway the examination has been extended to cover all lands in the primary and first indemnity limits in the State of Minnesota. The results of the examination of the second indemnity (40 miles) limits in Minnesota was reported to you by my [meters] of May 3rd and 12th, 1900, and reference is made to said letters for information re-
503 specting the condition of the grant in such limits.

The examination of the primary (20 miles) limits of the grant in Minnesota shows the area thereof to be 2,864,104.55 acres.

The amount chargeable against the grant in the primary limits is 1,553,501.33 acres, thus leaving an apparent loss in said limits of 1,310,603.22 acres.

The area of the first indemnity (30 miles) limits is 1,483,450.94 acres, of which 848,436.10 acres have been otherwise disposed of, leaving available in this limit for the purpose of in part satisfying the loss in the primary limits 635,014.84 acres, or 675,588.38 acres less than the quantity required.

Of the 635,014.84 acres above mentioned 622,740.42 acres were found to be chargeable against the grant as follows, properly approved 390,601.88 acres, properly selected 4,529.36 acres and pending conflicts 227,609.18 acres, and the remaining 12,274.42 acres were at the time of the examination vacant and subject to selection.

In the adjustment of this limit as well as of the primary limit the lands awarded to this company in its contest with the St. Paul and Pacific Company reported in 139 U. S., 1, were properly noted on the records of this office, and charged against the grant to this company under the caption "Properly Approved;" with a notation in the "Remarks" column showing that the company received them under the decree of the court in the case referred to above.

From the foregoing it appears that, considering only the primary and first indemnity limits, the grant in Minnesota is deficient by 675,588.38 acres, should it acquire all the lands chargeable and available in such limits, and upon the basis of charging the grant with only the lands now actually chargeable (i. e. omitting the vacant unselected lands in the 1st indemnity limits) the grant is deficient in the limits under consideration to the extent of 687,862.80 acres.

504 The joint resolution of May 31, 1870 (16 Stat., 378), however, provided for a second indemnity belt of ten miles additional to the first indemnity limits, and in this second indemnity limit there is chargeable against the grant as shown by my reports aforesaid 295,084.86 acres, 236,024.49 acres of which are on account of lands in the second indemnity limits approved direct to the company and 59,060.37 acres awarded it by the decree of the court in St. P. & P. v. N. P. Ry., Supra.

These lands, therefore, being properly chargeable against the grant should be taken in account in considering its condition in this State, and by so doing we find that upon the basis of chargeability the grant is deficient by 392,777.94 acres, which amount would be diminished by 12,274.42 acres, should the vacant lands in the first indemnity limits (herein reported) be approved to the company, thus leaving the deficiency 380,503.52 acres.

The examination shows 368.75 acres to have been erroneously patented to the company, 360 acres of which are in its clear primary limits and conflict with approvals to the State as swamp lands, and 8.75 acres of which are in the primary limits of the Northern Pacific Road conflicting with the twenty mile limits of the St. Vincent Extension, St. Paul, Minneapolis and Manitoba Ry. and embraced in Patented homestead entry No. 167, F. C. 585, made December 10, 1872, and August 4, 1879, respectively, based upon D. S. 949, made January 23, 1872, alleging settlement June 23, 1870.

In view of the above facts concerning the erroneously patented lands, no suit for the recovery of same, or the value of the land, is deemed necessary or to the interests of the Government.

Full report of the results of the examination of the grant (marked "A") is herewith transmitted for such consideration and instructions as you may deem proper.

Very respectfully,
BINGER HERMANN,
Commissioner.

505

13-12607.

"A"

Statement of Adjustment of Grant for the Northern Pacific Railroad in Minnesota Under Act of July 2, 1864, (13 Stat., 365) Primary (20 Miles) 1st Indemnity (30 Miles) and 2nd Indemnity (40 Miles) Limits.

Twenty Miles Limits.		
Area		2,864,104.55
Chargeable to Grant.		
Properly approved.		
In clear limits	986,928.42	
Conflicting 30 miles Limits L. S. & M	3,440.86	
Conflicting 10 miles Limits St. V. Ex. St. P. & [—]	200,168.21	
Conflicting 20 miles limits St. V. Ex. St. P. & P.	164,977.03	
Total chargeable as properly approved		1,355,514.52
Erroneously approved.		
In clear limits	360.00	
Conflicting 20 miles limits St. V. Ex. St. P. & P.	8.75	
Total erroneously approved		368.75
Listed and subject to grant.		
In clear Limits	17,865.41	
Conflicting 10 miles limits St. V. Ex. St. P. & P.	806.60	
Conflicting 20 miles limits St. V. Ex. St. P. & P.	593.05	
Total listed and subject to grant		19,265.06
Vacant and subject to grant.		
In clear limits	1,842.58	
Conflicting 30 miles limits L. S. & M	960.00	
Conflicting 20 miles limits St. V. Ex. St. P. & P.	80.00	
Total vacant and subject to grant		2,882.58
Entries and filings on lands otherwise subject to grant.		
In clear limits	6,154.45	
Conflicting 30 miles limits L. S. & M	286.01	
Conflicting 20 miles limits St. V. Ex. St. P. & P.	200.00	
Total entries and filings on lands otherwise subject to grant		6,640.46

[506] **Pending Conflicts.**

In clear limits	52,585.60	
Conflicting 10 miles limits St. V. Ex. St. P. & P.	4,777.63	
Conflicting 20 miles limits St. V. Ex. St. P. & P.	807.97	
Total pending conflicts		58,171.20

Disposals after definite location.

In clear limits	5,486.76	
Conflicting 30 miles limits L. S. & M.	1,200.00	
Total disposals after definite location		6,686.76

Lands disposed of but otherwise subject to grant.

In clear limits	4,662.56	
Conflicting 20 miles limits St. V. Ex. St. P. & P.	80.00	
Approved to L. S. & M. in 30 miles limits but chargeable to Nor. Pac.	99,229.44	
Total lands disposed of but otherwise subject to grant		103,972.00
Total chargeable to grant in 20 miles limits		1,553,501.33

Lost to grant.

By approvals to Lake Superior & Mississippi R. R. in 10 & 20 miles limits East of Thompson	76,500.29	

By entries and filings and prior grants and approvals.

In clear limits	538,307.45	
Conflicting 10, 20 & 30 miles limits L. S. & M.	428,342.54	
Conflict 15 miles limits St. P. & N. P.	155,920.80	
Conflicting 10 & 20 miles limits St. V. Ex. St. P. & P.	101,016.25	
Total lost by entries and filings and prior grants and approvals		1,300,087.33

Listed lands not subject to grant.

In 15 miles limits St. P. & N. P.		10,515.89
Total lost to grant in 20 miles limits		1,310,603.22

Total chargeable and lost in "0 miles limits—2,864,104.55

[507] **Thirty Miles (1st Indemnity) Limits.**

Area within 30 miles limits	1,483,450.94
Otherwise disposed of in 30 miles limits	848,436.10
Net area within which indemnity may be taken	635,014.84

Chargeable as Indemnity in 30 Miles Limits.

Properly approved	390,601.88	
Properly selected	4,529.36	
Pending conflicts	227,609.18	
Amount chargeable as indemnity in 30 miles limits		622,740.42
Vacant and subject to selection in 30 miles limits		12,274.42
Total amount chargeable as indemnity and and vacant and subject to selection in 30 miles limits		635,014.84

Apparent loss in 20 miles limits	1,310,603.22
Thus making an apparent deficiency in first indemnity (30 miles) limits to satisfy losses in 20 miles primary limits of	675,588.38

Forty Miles (2nd Indemnity Limits)

No adjustment of this limit is deemed necessary at present, but there has been approved to the Company within this limit in the State of Minnesota	236,024.69
And awarded by the Court (139 U. S. 1)	59,060.27
	295,084.96
Apparent deficiency in 1st indemnity to satisfy losses in primary limits	675,588.38
Making apparent loss to grant in Minnesota	380,503.42

RECAPITULATION.

Area of granted (20 miles) limits	2,864,104.55
Chargeable in (20 miles) limits	1,553,501.33
Apparent loss in (20 miles) limits	1,310,603.22
Deduct as chargeable to grant in 1st indemnity limits	622,740.42
	687,862.80
Deduct amount awarded by court and those approved to company in 2d indemnity limits	295,084.96
Deduct amount in 1st indemnity vacant and subject to selection	12,274.42
Leaving an apparent deficiency in Minnesota, not taking into account any vacant or unapproved land in the 2nd indemnity limits, of	380,503.42

508 COMPLAINANT'S EXHIBIT 37.

Offered in Evidence at Page 221, this Record.

509 Department of the Interior,
General Land Office,
Washington, D. C., Dec. 29, 1900.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of so much of the Minnesota Clear list No. 9 of the Northern Pacific Railway Company, approved November 22, 1894, as shows the S. E. 1-4 N. E. 1-4 Sec. 29 Tp. 55 N., R. 19 W., is a true and literal exemplification of the original now on file in this office.

Seal of U. S.
General Land Office

In Testimony whereof I have hereunto subscribed my name and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

10-cent I. R. Stamp.

510 Department of the Interior,
General Land Office,
October 17, [illegible].

Whereas, by the *Act of Congress approved July 2, 1864*, entitled "An Act granting to aid in the construction of a Railroad and Telegraph Line from Lake Superior to Puget's Sound on the Pacific Coast by the Northern Route" and the joint Resolution of May 31, 1870, there was granted to the Northern Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast," every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line as said Company may adopt through the Territories of the United States, and ten alternate sections of land per mile, on each side of said railroad whenever it passes through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims, or rights at the time the line of said road is definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office.

And Whereas, it is further provided that "whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of, other lands shall be selected by said Company in lieu thereof, under the direction of the Secretary of the Interior in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections."

And Whereas, by said *Joint Resolution of May 31, 1870*, it is further provided that "in the event of there not being in any State or Territory in which said main line or branch may be located at the time of the final location thereof, the amount of lands per mile granted by Congress to said Company within the limits prescribed by its charter, then said Company shall be entitled, under the direction of the Secretary of the
511 Interior, to receive so many sections of land, belonging to the United States and designated by odd numbers within ten miles on each side of said road, beyond the limits prescribed in said charter as will make up such deficiency on said main line or branch, except mineral and other lands as excepted in the charter of said Company of eighteen hundred and sixty-four, to the amount of lands that have been granted,

sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of subsequent to the passage of the Act of July two, eighteen hundred and sixty-four.

And Whereas, official statements from the Secretary of the Interior have been filed in the General Land Office, showing that the Commissioners appointed by the President under the provision of the fourth section of the first named Act, have reported to him that the said Northern Pacific Railroad and Telegraph Line, commencing at the City of Ashland, in the State of Wisconsin, and at Portland in the State of Oregon and terminating at Tacoma, in the State of Washington has been constructed and fully completed and equipped in the manner prescribed by the Act relative thereto, and the same accepted by the President.

And Whereas, Certain tracts have been selected under the Acts aforesaid, by the duly authorized Agent of said Northern Pacific Railroad Company as shown by his original lists of selections approved by the local land officers, and on file in this office.

And Whereas, the said tracts lie coterminous with the constructed portion of said road and are particularly described as follows, to wit:

North of Base Line and West of 4th Principal Meridian. Northern Pacific Railroad List.

	Parts of Section.	Section	Town	Range	Acres			Parts of Section.	Section	Town	Range	Acres	
	List No. 7	of Se	ction	mad	e Ma	rch 1	6, 18	83, at Duluth, Mi	nn.				
	Sections......	....	....	....	in li	eu of	....	.. Lost Lands					
	x x x x	x x	x x	x x	xxx	x x		x x x x	x x	x x	x x	xxx	x x
	S E ¼ N E ¼	29	55	19	40			S E ¼ N E ¼	21	48	27	40	
	x x x x	x x	x x	x x	xxx	x x		x x x x	x x	x x	x x	xxx	x x

General Land Office, October 17, 1894.

We hereby certify that we have carefully examined the foregoing list in connection with the records of this office and have found that the tracts embraced in the indemnity selections described are vacant unappropriated lands, outside of the 30-miles (first indemnity) and within the 40-miles (second indemnity) limits of the grant made to the Northern Pacific Railroad Company by Act of Congress approved July 2, 1864, (13 Stat., 365), and Joint Resolution of May 31, 1870, (16 Stat., 378), and legally subject to selection for the purposes of said grant, and that the tracts designated as basis for the indemnity selections were all disposed of or otherwise appropriated, by the United States, subsequent to the date of the granting act of July 2, 1864, and, so far as the records show have not been used as bases for other indemnity selections. And we further certify that we find, from actual examination of the records, that the losses from the grant for said company in the State of Minnesota cannot be satisfied within the 30-miles (first indemnity) belt within the State.

CHAS. H. BABBITT,
ALBERT G. HALL,
Examiners, Div. F.

Approved.
Wm. J. McGee,
Chief of Division F.

513

General Land Office,
Mineral Division, October 17, 1894.

This is to certify that there are no mining claims of record for lands in any of the townships containing selections. By the Act of Congress approved February 18, 1873, (Sec. 2345 R. S. U. S.) the provisions of the mining law do not apply to the mineral lands in the State of Minnesota.

GEO. F. POLLOCK,
C. A. HOLLINGSWORTH,
Examiners.

Approved.
Chas. C. Heltman,
Acting Chief of Division.

General Land Office,
Division of Swamp Lands,
Washington, D. C., October 17, 1894.

This certifies that the foregoing List No. 9, Northern Pacific Railroad, has been carefully examined in connection with the swamp land records of this office, and that the same has been found free from conflict.

F. P. McDERMOTT,
Examiner.

Approved.
J. J. Barnes,
Acting Chief of Division.

514 Now, therefore, as it has been found on a careful examination in connection with the authenticated map, on file in the General Land Office, of the survey of the Northern Pacific Railroad route that the foregoing selections fall within the forty miles lateral limits of said route, and, in so far as the returns to the General Land Office show, are free from conflict, it is hereby recommended that the said selections, aggregating Twenty-three thousand Three hundred and Thirty-three Acres and Fifty-seven hundredths of an acre, be approved and carried into patent as lands falling within the grant to the said Northern Pacific Railroad Company, by the acts aforesaid, excluding, however, from the approval and from transfer in the patent that may issue "all mineral lands," should such be found among the tracts aforesaid; but, in accordance with the terms of the statute, this exclusion "shall not be construed to include iron and coal lands."

S. W. LAMOREUX,
Commissioner.

To the Honorable,
The Secretary of the Interior.

Department of the Interior,
Office of the Secretary,
November 22, 1894.

Approved: embracing twenty-three thousand three hundred and thirty-three acres and fifty-seven hundredths of an acre.
HOKE SMITH, Secretary.
J. I. H.

515 EXHIBIT No. 38:—Offered in evidence at page 222, this record:

Book 151 of Deeds Page 98.

No. 1052. Filed for record March 15, 1897, at 2 p. m. Patent No. 23.

Northern Pacific Railroad Lands
Second Indemnity Limits,
Duluth Land District.
Saint Louis County, Minnesota.

The United States of America, to all to whom these presents shall come—Greeting:

Whereas, by the act of Congress approved July 2, 1864, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph Line from Lake Superior to Puget Sound on the Pacific Coast by the Northern Route" and the joint resolution of May 31, 1870, there was granted to the Northern Pacific Railroad Company its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast "every alternate section of Public Land not mineral designated by odd numbers to the amount of twenty alternate sections per mile on each side of said railroad line as said Company may adopt through the territories of the United States and ten alternate sections of land per mile on each side of said railroad whenever it passes through any state and whenever on the line thereof the United States have full title not reserved, sold, granted or otherwise appropriated and free from preemption or other claims or rights at the time the line of said road is definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office."

516 And whereas it is further provided that "whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers preempted or otherwise disposed of other lands shall be selected by said Company in lieu thereof, under the direction of the Secretary of the Interior the alternate sections and designated by odd numbers not more than .... miles beyond the limits of said alternate sections."

And whereas by said joint resolution of May 31, 1870, it is further provided that, "in the event of there not being in any state or territory in which said main line or branch may be located at the time of the final location thereof the amount of lands per mile granted by Congress, to said Company within the limits prescribed by its charter then said Company shall be entitled under the direction of the Secretary of the Interior to receive so many sections of land belonging to the United States and designated by odd numbers within ten miles on each side of said road, beyond the limits prescribed in said charter as will make up such deficiency on said main line or branch except mineral and other lands as excepted in the charter of said Company of eighteen hundred and sixty-four to the amount of lands that have been granted, sold, reserved, occupied by homestead settlers pre-empted or otherwise disposed of subsequent [of] the passage of the act of July two, eighteen hundred and sixty-four.

And whereas official statements from the Secretary of the Interior have been filed in the General Land Office showing that the commissioners appointed by the President under the provisions of the fourth section of the first named Act, have reported to him that the said Northern Pacific Railroad and Telegraph Line commencing at the City of Ashland in the State of Wisconsin and at Portland in the State of Oregon and terminating at Tacoma in the State of Washington has been constructed and fully completed and equipped in
517 the manner prescribed by the act relative thereto and the same accepted by the President.

And whereas, certain tracts have been selected under the Acts aforesaid by the duly authorized agent of said Northern Pacific Railroad Company as shown by his original lists of selections approved by the local land officers and on file in this office.

And whereas the said tracts lie coterminous with the constructed portions of said road and are particularly described as follows, to wit, North of base line and west of the Fourth Principal Meridian, State of Minnesota.

Township Fifty-four Range Eighteen. The South half of the southwest quarter of section eleven; containing eighty acres.

Township Fifty-four Range Twenty. The Lot numbered One and the Southwest quarter of the Southwest quarter of Section One containing eighty acres and ten hundredths of an acre.

Now know Ye that the United States of America, in consideration of the premises and pursuant to the said Acts of Congress have given and granted and by these presents do give and grant unto the said Northern Pacific Railroad Company its successors and assigns the tracts of land selected as aforesaid and embraced in the foregoing. Yet excluding and excepting "all mineral lands" should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute" shall not be construed to include coal and iron lands."

To have and to hold the said tracts with the appurtenances thereof unto the said Northern Pacific Railroad Company its successors and assigns forever.

In Testimony Whereof I Grover Cleveland President of the United States of America have caused these letters to be made Patent and the Seal of the General Land Office to be hereunto affixed.

518 Given under my hand at the City of Washington this the Fourth day of December in the year of our Lord One thousand eight hundred and ninety-four and of the independence of the United States the one hundred and nineteenth.

By the President,
GROVER CLEVELAND,
M. McKean, Secretary,

United States General
Land Office.

L. Q. C. Lamar,
Recorder of the General Land Office.

Recorded in Vol. 15, Pages 9 to 16 inclusive.

EXHIBIT No. 39:—Duly certified. Offered in evidence at page 222, this record.

Circuit Court of the United States, District of Minnesota,
Third Division.

The Farmers' Loan and Trust Company, Complainant,
vs.
Northern Pacific Railroad Company, Phillip B. Winston, George R. Sheldon, William S. P. Prentice, William C. Sheldon, Jr., surviving partners of the firm of William C. Sheldon & Co., Defendants.

June 5, 1899.

This cause coming on to be heard on this day upon all the records and proceedings herein, and upon the petition of Edwin H. McHenry and Frank G. Bigelow, Receivers herein, filed on this day; and it appearing that an order has been entered in a certain proceeding between the same parties in the Circuit Court of the United States for the Eastern District of Wisconsin, to which this proceeding is ancillary in the following form, namely:

519 Circuit Court of the United States, Eastern District of Wisconsin.

The Farmers' Loan and Trust Company, Complainant.
vs.
Northern Pacific Railroad Company, Phillip B. Winston, George R. Sheldon, William S. P. Prentice, and William C. Sheldon, Jr., surviving partners of the firm of William C. Sheldon & Co., Defendants.

May 25, 1899.

This cause coming on this day to be heard upon all the record and proceedings herein, and upon the petition of Edwin H. McHenry and Frank G. Bigelow, the Receivers herein, filed on September 25, 1897, and no one opposing, it is thereupon

Ordered and Decreed that the prayer of said petition be and the same is granted, and that all the lands granted by Congress to aid in construction and equipment of the railroad of the defendant, the Northern Pacific Railroad Company, and all rights of said defendant under the several land grants made to it by Congress in any such lands lying within the State of Minnesota and State of North Dakota east of the Missouri River, shall be sold at public sale to the highest bidders, in the following manner:

I. Such sale shall be made by Alfred L. Cary, Esq., hereby appointed special Master for that purpose, who is hereby required to report to the Court his doings hereunder.

II. All of the said lands for which letters patent have issued to said defendant Northern Pacific Railroad Company, and the right to receive lands for which letters patent have not issued, but which have been selected by and certified to said company, shall be sold in single sections, or subdivisions thereof, and all lands for which patents have not issued, and which have not been selected by and certified to said company, but to which said Northern Pacific Railroad Company
520 is entitled under said grants of Congress and all rights of said Northern Pacific Railroad Company to receive from the United States any lands which have not been certified or patented to said railroad company, whether under the grant expressed in the Act of Congress of July 2, 1864, or under any subsequent grant, by way of indemnity or otherwise, to said company, together with all the right, title, interest and claim in or to any such lands, and all its rights to receive from the United States patents therefor; and also all right, title, interest and equity in and to any other lands to which said Northern Pacific Railroad Company may be en-

titled, and which may have accrued or shall hereafter accrue to it under any of said land grants; and also all right, title, equity and interest in and to any lands covered by or included in any of said land grants and not hereinbefore specified, shall be sold in one parcel as to such lands and rights in each county, at the following places:

(a) Minnesota.

1. All of said lands and rights to lands within the County of Pine, in the State of Minnesota, shall be sold at the court house of said county at Pine City.

2. All of said lands and rights to lands within the County of St. Louis, in the state of Minnesota, shall be sold at the court house of said county at Duluth.

3. All of said lands and rights to lands within the County of Lake, in the State of Minnesota, shall be sold at the court house of said county at Two Harbors.

4. All of said lands and rights to lands within the County of Itasca, in the State of Minnesota, shall be sold at the court house of said county at Grand Rapids.

5. All of said lands and rights to lands within the County of Beltrami, in the State of Minnesota, shall be sold at the Court House of said County at Bemidji.

521 6. All of said lands and rights to lands within the County of Cass, in the State of Minnesota, shall be sold at the court house of said county at Walker.

7. All of said lands and rights to lands within the County of Hubbard, in the State of Minnesota, shall be sold at the court house of said county at Park Rapids.

8. All of said lands and rights to lands within the County of Wadena, in the State of Minnesota, shall be sold at the court house of said county at Wadena.

9. All of said lands and rights to lands within the County of Todd, in the State of Minnesota, shall be sold at the Court House of said County at Long Prairie.

10. All of said lands and rights to lands within the County of Douglas, in the State of Minnesota, shall be sold at the court house of said county at Alexandria.

11. All of said lands and rights to lands within the County of Grant, in the State of Minnesota, shall be sold at the court house of said county at Elbow Lake.

12. All of said lands and rights to lands within the County of Otter Tail, in the State of Minnesota, shall be sold at the court house of said county, at Fergus Falls.

13. All of said lands and rights to lands within the County of Wilkin, in the State of Minnesota, shall be sold at the Court House of said county, at Breckenridge.

14. All of said lands and rights to lands within the County of Clay, in the State of Minnesota, shall be sold at the court house of said county, at Moorhead.

15. All of said lands and rights to lands within the County of Norman, in the State of Minnesota, shall be sold at the court house of said county, at Ada.

522 16. All of said lands and rights to lands within the County of Becker, in the State of Minnesota, shall be sold at the court house of said County, at Detroit.

17. All of said lands and rights to lands within the County of Crow Wing, in the State of Minnesota, shall be sold at the court house of said county at Brainerd.

18. All of said lands and rights to lands within the County of Aitkin, in the State of Minnesota, shall be sold at the court house of said county at Aitkin.

19. All of said lands and rights to lands within the County of Morrison, in the State of Minnesota, shall be sold at the court house of said county at Little Falls.

20. All of said lands and rights to lands within the County of Mille Lacs, in the State of Minnesota, shall be sold at the court house of said county at Princeton.

21. All of said lands and rights to lands within the County of Carlton, in the State of Minnesota, shall be sold at the court house of said county at Carlton.

(b) North Dakota:

1. All of said lands and rights to lands within the County of Dickey, in the State of North Dakota, shall be sold at the court house of said county at Ellendale.

2. All of said lands and rights to lands within the County of Richland, in the State of North Dakota, shall be sold at the court house of said county at Wahpeton.

3. All of said lands and rights to lands within the County of Traill, in the State of North Dakota, shall be sold at the court house of said county at Hillsboro.

4. All of said lands and rights to lands within the County of Cass, in the State of North Dakota, shall be sold at the court house of said county at Fargo. 523

5. All of said lands and rights to lands within the county of Ransom, in the State of North Dakota, shall be sold at the court house of said county at Lisbon.

6. All of said lands and rights to lands within the County of La Moure, in the State of North Dakota, shall be sold at the court house of said county at La Moure.

7. All of said lands and rights to lands within the County of Steele, in the State of North Dakota, shall be sold at the court house of said county at Sherbrooke.

8. All of said lands and rights to lands within the County of Barnes, in the State of North Dakota, shall be sold at the Court House of said county at Valley City.

9. All of said lands and rights to lands within the County of Griggs, in the State of North Dakota, shall be sold at the court house of said county at Cooperstown.

10. All of said lands and rights to lands within the county of Stutsman, in the State of North Dakota, shall be sold at the court house of said county at Jamestown.

11. All of said lands and rights to lands within the County of Foster, in the State of North Dakota, shall be sold at the court house of said county at Carrington.

12. All of said lands and rights to lands within the County of Wells, in the State of North Dakota, shall be sold at the court house of said county at Fessenden.

13. All of said lands and rights to lands within the County of Eddy, in the State of North Dakota, shall be sold at the court house of said county at New Rockford.

14. All of said lands and rights to lands within the County
of Kidder, in the State of North Dakota, shall be sold at
524 the court house of said county at Steele.

15. All of said lands and rights to lands within the County of Burleigh, in the State of North Dakota, shall be sold at the court house of said county at Bismarck.

16. All of said lands and rights to lands within the County of McLean, in the State of North Dakota, shall be sold at the court house of said county at Washburn.

17. All of said lands and rights to lands within the County of Sargent, in the State of North Dakota, shall be sold at the court house of said county at Forman.

18. All of said lands and rights to lands within the County of Logan, in the State of North Dakota, shall be sold at the court house of said county at King. (Correction made June 9. See order filed June 9, 1899.)

19. All of said lands and rights to lands within the County of Emmons, in the State of North Dakota, shall be sold at the court house of said county at Linton.

20. All of said lands and rights to lands within the County of McIntosh, in the State of North Dakota, shall be sold at the court house of said county at Ashley.

The Receivers are hereby required to file schedules showing the lands and rights to be sold thereunder with the clerk of this court and with the clerks of the United States Circuit Court for the Districts of Minnesota and North Dakota, respectively, at least thirty (30) days before the date of the first sale to be made hereunder.

III. Such sales shall, respectively, be made upon a day or days to be fixed by said Special Master, and notice of the times and places of said sales, describing the property and rights to be sold and referring to this decree, shall be published respec-
tively once a week for at least four weeks prior to such
525 sales, respectively, in a newspaper printed, regularly is-
sued and having a general circulation in the county and
State where said sales, respectively, are to be made as hereinbefore provided.

The Special Master may adjourn or postpone, by Public announcement said sales or any of them as to any property to be sold thereat; and without any further notice may proceed with such sale or sales on any day to which the same may be adjourned.

IV. The Special Master shall receive no bid from any one offering to bid for said patented lands, or lands selected and certified but not patented, who shall not first deposit with him, as a pledge that he will make good his bid in case of acceptance the sum of ten dollars for each section of such lands for which such bidder desires to bid, in money or by a certified check upon any national bank or trust company in the City of New York, or in the City of St. Paul, Minnesota.

Upon the acceptance of any bid for any of said patented lands or lands selected and certified but not patented, the person to whom the same shall have been struck off shall deposit with the Special Master ten per cent. of the total amount of his bid for such lands, either in cash or in a certified check upon any national bank or trust company in the City of New York or in the city of St. Paul, Minnesota.

V. The Special Master shall receive no bid from any one offering to bid for said unpatented lands and rights who shall not first deposit with him, as a pledge that he will make good his bid in case of acceptance, a sum equal to five per cent of the amount of his bid, in money or in a certified check upon a national bank or trust company in the city of New York or in the City of St. Paul, Minnesota.

Upon the acceptance of any bid for said unpatented lands
and rights the bidder shall forthwith deposit with said
526 Special Examiner a sum equal to ten per cent. of the
amount of his bid, in money or in a certified check on
any national bank or trust company in the City of New York or in the City of St. Paul, Minnesota.

VI. Upon the confirmation of any sale by the Court, the purchaser shall make such further payment or payments in cash on account of his bid as the Court may from time to time direct. The purchaser of any parcel may satisfy and make good any part of his bid not required to be paid in cash, by executing and delivering to the said Master an assignment of any claim against said Northern Pacific Railroad Company which shall have been, at the time of such assignment, finally allowed by the Court in this suit, and of which such purchaser shall then be the owner; and such purchaser shall be credited therefor, on account of his bid, with such sums as would be payable on such claims out of the purchase price of all the lands if the whole amount thereof had been paid in cash. If the credit to which the owner of any claim so assigned would be entitled by reason thereof shall exceed the amount due from him upon such bid in excess of the amount required to be paid in cash, then such assignment to said master may be of such amount out of the total of the said claim as may be necessary to make up the amount so due on such bid or bids; and the right of such purchaser in respect of the balance due on such claim or claims shall not be affected thereby.

All such assignments shall be filed in the office of the clerk of this court by said Master, with his report, and shall, if the said report and sales be confirmed, operate to extinguish wholly or pro tanto as the case may be, the claim or claims of such purchaser so assigned.

VII. All sums of money received by the Special Master shall forthwith be deposited with the Clerk of this Court subject to the order of this Court. [order of this court.]

527 In case any bidder for any of said parcels shall fail to make the deposit required therefor, the lands or rights struck off to him shall then and there be offered for sale without further notice or advertisement.

Any cash which any successful bidder may previously have deposited as pledge that he would make good his bid, shall be received on account of the amount required to be paid on the acceptance of his bid.

By the Court,
(Signed) JAS. G. JENKINS,
Circuit Judge.

And a certified copy of said order having been filed herein, and all the parties to this action appearing and consenting thereto, and no reason appearing to the Court why said petition should not be granted, it is thereupon,

Ordered that the said order of the Circuit Court of the United States for the Eastern District of Wisconsin, entered on the 25th day of May, 1899, be and the same is hereby adopted and in all things made the order of this court herein.

WALTER H. SANBORN,
Circuit Judge.

Indorsed: Amended Decree of Sale of Lands East of the Missouri River. Filed June 5th, 1899. Henry D. Lang, Clerk.

528 EXHIBIT No. 49.—Duly certified. Offered in evidence at page 222, this record.

United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1899. Sept. 20th, 1899.

Wednesday Morning.

Court opened pursuant to adjournment.

Present: Hon. Walter H. Sanborn, Circuit Judge; Hon. Robert G. Evans, U. S. District Attorney; By J. M. Dickey, Assistant; Hon. Wm. H. Grimshaw, U. S. Marshal; Henry D. Lang, Clerk.

The Farmers' Loan & Trust Company,
No. 4100 vs. In Equity.
Northern Pacific Railroad Company, Phillip H. Winston, George R. Sheldon, William S. P. Prentice, William C. Sheldon, Jr., surviving partners of the firm of William C. Sheldon & Co.

The report of Alfred L. Cary, as Special Examiner, of the Sales by him made of the lands and rights in respect of lands directed to be sold in and by the decree of the Circuit Court of the United States for the Eastern District of Wisconsin in a cause therein pending between the Farmers' Loan and Trust Company as complainant and the Northern Pacific Railroad Company and others as defendants to which this cause is ancillary, so far as such sales affect lands and rights in respect of lands in the State of Minnesota, having been filed herein; and it appearing to this court that said Circuit Court of the United States for the Eastern District of Wisconsin in said cause to which this cause is ancillary, has upon a similar report of said Alfred L. Cary, as Special Master, and of other reports of said Alfred L. Cary, as Special Master of sales by him made of lands and rights in respect of lands directed to be sold under said decrees and situate elsewhere than in said State of Minnesota, has entered an order in the following form, viz: 529

Circuit Court of the United States for the Seventh Judicial Circuit and Eastern District of Wisconsin.

The Farmers' Loan and Trust Company, Complainant,
vs. In Sequestration.
Northern Pacific Railroad Company, Philip B. Winston, George R. Sheldon, William S. P. Prentice, and William C. Sheldon, Jr., surviving partners of the firm of William C. Sheldon & Co., Edward D. Adams, Johnston Livingston, Charles B. Van Nostrand, and others, Defendants.

Now come again all the parties by their respective solicitors, and comes also the purchaser, Northern Pacific Railway Company; and its petition that the several reports of Alfred L. Cary, the Special Master, heretofore filed herein, of the sales by him made of the lands and rights in respect of lands in and by the decrees herein directed to be sold, should be approved, and that the sales of said lands and rights of lands of the Northern Pacific Railroad Company, briefly described in the notice of sale thereof, should be confirmed and made absolute, came on to be heard.

And it appearing by the several reports of said Special Master, so filed as aforesaid, that he has fully complied with the directions in said decree as to the sale of said lands and rights in respect of lands, and that such purchaser, the Northern Pacific Railway Company, was the highest and best bidder for said lands and rights in respect of lands sold as provided in said decrees, and that the same were struck off at the several sales thereof to said purchaser.

Subject, however, as to the portions of said lands and rights in respect of lands covered thereby, to the lien of a certain mortgage or deed of trust, dated January 1st, 1881, executed by the Northern Pacific Railroad Company to the Central Trust Company of New York as trustee.

530 And it further appearing by such Special Master's Report and by the said petition of the said purchaser, that the said purchaser has made the payments thus far obligatory upon it;

And it appearing by the said petition that the said purchaser, the Northern Pacific Railway Company, is a railroad corporation organized and existing under the laws of the State of Wisconsin, of which corporation every member is a citizen and a resident of the United States; that it had complied with all the requirements of law of each and every States of Minnesota and North Dakota, which are the only States of the

United States in which any part of the said real property is situated, so as to enable and entitle it to transact business and to hold property, real and personal, in every such State; that the said corporation being the owner and holder of claims against the Northern Pacific Railroad Company which have been finally allowed by this Court to the amount of more than $87,000,000 and has tendered assignment of the same to be cancelled or credited as provided in said decrees, on account of the respective bids made by said purchaser, the Northern Pacific Railway Company, for all said lands and rights in respect of lands;

And no sufficient cause being shown against the report of the Special Master of the granting of the petition of the said purchaser;

Now, on motion of Turner, McClure & Rolston, solicitors for the complainant, The Farmers' Loan and Trust Company, and of William Nelson Cromwell, of counsel for the purchaser, all the other parties appearing by Counsel, and all consenting that the said motion for confirmation of said sale and of the said reports of said Special Master made thereon, may be now heard and determined, and all questions thereunder adjudicated.

It is hereby ordered, adjudged and decreed as follows, to wit:

531 The said several reports of Alfred L. Cary, the Special Master are in all things approved, and the respective sales by him made to the said Northern Pacific Railway Company of all and singular said patented lands and lands selected and certified and other lands and rights in respect of lands of the Northern Pacific Railroad Company, be and the same are respectively in all things ratified, approved and confirmed and made absolute, and

It is further ordered and decreed that upon delivery of the said assignments of said claims to the Special Master, but in blank as to the amount assigned out of the total of said claims, prior to the execution of a deed being held and tendered by the purchaser, prior to the execution of the deed of conveyance of said parcels, the said Special Master be and he hereby is authorized to sign, seal, execute and deliver deeds of conveyance and assignments to said purchasers, the Northern Pacific Railway Company, conveying to it all and singular the said patented lands, and lands selected and certified, and other lands and rights in respect of lands sold to it as aforesaid. But in lieu of such several deeds and assignments the Special Master may execute, acknowledge and deliver a single deed covering and conveying as an entirety all the said lands and rights in respect of lands of the Northern Pacific Railroad Company and one assignment covering all such rights in respect of lands not embraced in said deed, wheresoever situated; and in order to facilitate the recording thereof, ten originals of each of such deeds or deed may be executed, acknowledged and delivered by the said Special Master, all or any one or more of which may be recorded, and each of which, when executed, acknowledged and delivered, shall be deemed an original.

And it is further ordered and decreed, that the Receivers of this Court, shall make conveyances and assignments to the said purchaser, its successors or assigns, of said lands and rights to and in respect of land.

532 On exhibition of any such deed or assignment executed and delivered by the Special Master as herein ordered, and upon the request of the grantee or assignee thereunder, the Receivers of this Court are authorized, directed and required to let the said purchaser, and its successors and assigns, into possession of the premises therein conveyed, and to deliver to it any contract thereby assigned; and the Receivers or any party in this cause, having possession thereof, shall deliver such property and contracts over to the purchaser, its successors or assigns.

It is further ordered and decreed, that by way of further assurance and confirmation of title to such purchaser the said Northern Pacific Railroad Company, by its proper officers and under its corporate seal, shall, sign, seal, execute, acknowledge, and deliver to said purchaser, or to its successors or assigns, its deed of deeds of conveyance, assignment, transfer, release and further assurance of all the said lands and rights sold to said purchaser.

The Special Master shall hold said assignment of claims until the credit or payment on account thereof upon the bids of such purchaser shall be adjudged by the Court and he shall then fill up the blank in the same with the amount so due and file the same with the clerk of this Court, and upon such filing of said assignment the said claims shall be and be deemed to be satisfied to the extent of the amount specified in said assignment.

Upon consent of the purchaser this decree is passed subject to the right of the Court to require as a condition thereof that upon final distribution of the fund in Court and in the hands of its Receivers there shall be paid upon all claims finally allowed and not owned by the purchaser a sum equal to ten per centum of the amount of such claims before any payment upon claims owned by the purchaser.

Sept. 16th, 1899.

(Signed) JAS. G. JENKINS,
U. S. Circuit Judge.

533 And a certified copy of said order having been filed herein, and all the parties to this action appearing and consenting thereto,

Now, on motion of Jared How, solicitor for the complainant above named,

It is ordered that the said order of the Circuit Court of the United States for the Eastern District of Wisconsin, be and the same is hereby adopted and in all things made the order of this Court herein.

St. Paul, Sept. 20, 1899.

WALTER H. SANBORN,
Circuit Judge.

Ordered that this Court do now adjourn until to-morrow morning at 10 o'clock.

A true record,

Attest: HENRY D. LANG, Clerk.

EXHIBIT No. 41:—Duly certified. Offered in evidence at page 89, Vol. 2, this record:

534 EXHIBIT 41—Offered in evidence at page 223, this record.

Special Master's and Receivers' Deed, St. Louis County, Minnesota.

No. 23974. Filed Jan. 31st, 1900, at 11 a. m. Book 177 of Deeds, page 313.

An Indenture, Made the 22nd day of September, in the year one thousand eight hundred and ninety-nine, between

Alfred L. Cary, as Special Master, appointed as such by the Circuit Court of the United States for the Eastern District of Wisconsin, in the cause in equity, and by the Circuit Courts of the United States in other districts in causes ancillary thereto as hereinafter mentioned, party of the first part;

Edwin H. McHenry and Frank G. Bigelow as Receivers of the Northern Pacific Railroad Company, a corporation created by an act of Congress of the United States, approved July 2, 1864, parties of the second part, and

Northern Pacific Railway Company, a railroad corporation organized and existing under the laws of the State of Wisconsin, party of the third part:

Whereas, at the January term, A. D. 1896, of the Circuit Court of the United States for the Eastern District of Wisconsin—to wit, on the 25th day of May, 1896— in a certain cause in equity pending therein, wherein The Farmers' Loan and Trust Company is complainant and the Northern Pacific Railroad Company, Philip B. Winston, George R. Sheldon, William S. P. Prentice and William C. Sheldon, Jr., surviving partners of the firm of William C. Sheldon & Company, and others are defendants, a certain sequestration decree was entered, whereby the said Edwin H. McHenry and Frank G. Bigelow were appointed Receivers of certain lands, assets, property and effects, real and personal, of the said Northern Pacific Railroad Company, including the lands, rights to lands and property hereinafter mentioned and described, and all of which the said defendant Northern Pacific Railroad Company was, by said decree, ordered to forthwith convey unto said Receivers as such, their successors and assigns.

And Whereas, certain decrees ancillary to that above mentioned and of like character, force and effect, were afterwards entered in like causes pending between the same parties in the Circuit Courts of the United States for the following districts, viz: in the District of Minnesota and in the District of North Dakota.

And Whereas, at the January term, A. D. 1899, of the said Circuit Court of the United States for the Eastern District of Wisconsin—to wit: on the 25th day of May, 1899—in said cause in equity pending therein, it was, among other things, ordered and decreed by said Court (1) that all the lands granted by Congress to aid in the construction and equipment of the railroads of the defendant, the Northern Pacific Railroad Company, and all rights of said defendant under the several land grants made to it by Congress in any such lands lying within the State of Minnesota and State of North Dakota east of the Missouri River, should be sold at public sale to the highest bidders in the manner specified in said decree; (2) that such sales should be made by Alfred L. Cary, Esq., who was thereby appointed Special Master for that purpose; (3) that all of said lands for which letters patent had issued to said defendant, Northern Pacific Railroad Company, 535 and the right to receive for which letters patent had not issued but which had been selected by and certified to said company, should be sold in single sections or subdivisions thereof; (4) that all lands for which patents had not issued and which had not been selected by and certified to said company, but to which said Northern Pacific Railroad Company was entitled under said grants of Congress, and all rights of said Northern Pacific Railroad Company to receive from the United States any lands which had not been certified or patented to said railroad company, whether under the grant expressed in the act of Congress of July 2, 1864, or under any subsequent grant, by way of indemnity or otherwise, to said company, together with all the right, title, interest and claim in or to any such lands, and all its rights to receive from the United States patents therefor, and also all right, title, interest and equity in and to any other lands to which the said Northern Pacific Railroad Company might be entitled and which might have accrued or should thereafter accrue to it under any of said land grants, and also all right, title, equity and interest in and to any lands covered by or included in any of said land grants and not thereinbefore specified, should be sold in one parcel as to such lands and rights in each county named in said decree and at the place in each such county designated in said decree; (5) that the Receivers appointed by said Court in said cause were, by said decree, required to file schedules showing the lands and rights to be sold under said decree with the Clerk of said Court and with the Clerks of the United States Circuit Courts for the Districts of Minnesota and North Dakota respectively, at least thirty days before the date of the first sale to be made under said decree; (6) that such sales should respectively be made upon a day or days to be fixed by said Special Master, and notice of the times and places of said sales, describing the property and rights to be sold and referring to said decree, should be published respectively once a week for at least four weeks prior to such sales, respectively, in a newspaper printed, regularly issued and having a general circulation in the county and state where said sales, respectively, were to be made as provided and designated in said decree.

And Whereas, certain decrees ancillary to that of May 25th, 1899, above mentioned and of like character, force and effect, were entered June 5th, 1899, in like causes pending between the same parties in the Circuit Courts of the United States for the following districts, viz: in the District of Minnesota and in the District of North Dakota.

And Whereas, said party of the first part, in pursuance of said decrees and a notice of sale given by him as required by said decrees, did, at one of the places and in one of the counties specified in said decrees as at and in which one of said sales was to be made, to wit: at the Court House at Duluth, in the County of St. Louis, and State of Minnesota, and at the time specified in said notice of sale for the sale in said county, offer at public sale all the lands within said county granted by Congress to aid in the construction and equipment of the railroads of the defendant, Northern Pacific Railroad Company, and all rights of said defendant under the several land grants made to it by Congress in any such lands lying within said county, due notice of the time and place of such sale having been given pursuant to said decrees and according to law, and the said decrees having been complied with in all things touching and relating to said sale.

And Whereas, at such sale, all of said lands within said County of St. Louis and State of Minnesota, for which letters patent had issued to said defendant, Northern Pacific Railroad Company, and the right to receive lands for which letters patent had not issued but which had been selected by and certified to said Company, were offered and sold in single sections or subdivisions thereof, and were struck off to the
536 said party of the third part for the respective sums set forth in the schedule marked A 2, (except as to the lands represented by "Item Number" 390 in said schedule) annexed to the reports of such sales made by said party of the first part and hereinafter referred to, such sums being the highest sums bidden respectively therefor.

And Whereas, at such sale, all of said lands within the County of St. Louis, in the State of Minnesota, for which patents had not issued and which had not been selected by and certified to said Northern Pacific Railroad Company, but to which said railroad company was entitled under said grants of congress, and all rights of said railroad company to receive from the United States any lands within said county and state which had not been certified or patented to said railroad company, whether under the grant expressed in the act of congress of July 2, 1864, or under any subsequent grant by way of indemnity or otherwise, to said railroad company, together with all the right, title, interest and claim in or to any such lands and all its rights to receive from the United States, patents therefor, and also all mineral and other reservations and exceptions of every nature and description contained in any conveyance or contract in respect of lands within said county and state at any time made by said railroad company or its Receivers or otherwise, and all rights, benefits, equity of redemption, title, interest or claim of said railroad company thereunder, and in and to all lands granted to it by the Congress of the United States within said county and state and which might not be included in the sales under said decrees under the foregoing description of lands for which letters patent had issued to said railroad company, and the right to receive lands for which letters patent had not issued, but which had been selected by and certified to said company, whether or not such lands were then held by or had been theretofore sold or contracted to be sold by said railroad company or such Receivers, or were claimed to have been sold under judicial proceedings, or for non-payment of taxes or for any cause soever, and whether or not the same stood in the name of said railroad company, it having been the intention to include every possible right, title and interest of said railroad company in and to any of the lands within said county and state covered by any grant to said railroad company by the Congress of the United States, and which might not be included in the sale under the said decrees under the foregoing description of lands for which letters patent had issued to said railroad company and the right to receive lands for which letters patent had not issued, but which had been selected by and certified to said company, all subject, however, to a certain mortgage or deed of trust dated the first day of January, 1881, known as the General First Mortgage of said Northern Pacific Railroad Company, and executed by it to the Central Trust Company of New York as trustee, were offered and sold in one parcel and were struck off to said party of the third part for the sum specified in said Schedule A 7 of said reports of sales as the amount at which the lands and rights represented by "Item Number" 390 of said schedule were struck off, such sum being the highest sum bidden therefor.

And Whereas, the said sales with respect to such of the lands sold as had theretofore been contracted to be sold by the Northern Pacific Railroad Company or by its Receivers, were made subject to the rights of the purchasers under said contracts.

And Whereas, said party of the first part, as such Special Master, did duly make his reports of said sales to and file the same with the said Circuit Court of the United States for the Eastern District of Wisconsin, on the 25th day of August, 1899, and also to and with the said Circuit Court of the United States for the District of Minnesota, on the 26th day of August, 1899, which said reports and the sales therein reported were, upon due notice to all parties, duly con- 537
firmed by the decrees of said Circuit Courts, respec-

tively, entered on the following dates, viz., in the Eastern District of Wisconsin, on the 16th day of September, 1899, and in the District of Minnesota, on the 20th day of Septembe 1899.

And Whereas, in and by said decrees of confirmation, the said Special Master was authorized to sign, seal, execute and deliver to the said party of the third part deeds of conveyance and assignments, conveying to it all and singular the property, premises and rights of every kind and description so sold as aforesaid pursuant to the terms and conditions of such sale, and said Receivers were also ordered to make conveyances and assignments to the said party of the third part, its successors or assigns, of said lands and rights to and in respect of land.

And Whereas, said party of the third part has fulfilled all the terms of purchase and made full payment of such bids as provided by such decrees.

Now Therefore, This Indenture Witnesseth, that said Alfred L. Cary as such Special Master, party of the first part, in order to carry into effect the sales made by him as aforesaid to the party of the third part in pursuance of the said decrees and in conformity to law in consideration of the premises and of the prices and sums so bidden as aforesaid by the said party of the third part and by it to him paid, amounting in the aggregate to the sum of One Hundred Seventeen Thousand Seven Hundred Dollars, the receipt whereof is hereby acknowledged, and the said Edwin H. McHenry and Frank G. Bigelow, as such Receivers, parties of the second part, pursuant to the authority and direction to them given in and by said several decrees as hereinbefore recited and by reason of the premises and for the considerations hereinbefore expressed, have granted, bargained, sold, assigned, aliened, released, conveyed and confirmed, and the said parties of the first and second parts by these presents do grant, bargain, sell, alien, release, convey and confirm unto the said Northern Pacific Railway Company, party of the third part hereto, and to its successors and assigns, forever, the following described property embraced and included in said decrees and thereunder and thereby authorized and directed to be sold, viz.:

All lands within the said County of St. Louis, in the said State of Minnesota, granted by the Congress of the United States to aid in the construction and equipment of the railroads of the Northern Pacific Railroad Company, for which letters patent have issued to said railroad company, and the right of said railroad company to receive the lands within said last mentioned county under said grants of Congress for which letters patent have not issued, but which have been selected by and certified to said company, being all the lands and rights in respect of lands described and set forth in said schedule marked A 2, annexed to and forming part of said Special Master's reports to the said Circuit Courts of the United States of sales in said State of Minnesota, and filed in the offices of the clerks of said courts as aforesaid, except the lands and rights represented by "Item number" 390, in said schedule, together with all the right, title, interest, benefit, claim and demand of said Northern Pacific Railroad Company, and the Receivers thereof in, to, under or by reason of the certain contracts made by said Company or Receivers for the sale of certain of said lands designated upon said schedule by a specific number as to the portions of said lands covered thereby, and all moneys due and to grow due thereunder.

Also all lands within the said County of St. Louis, in the said State of Minnesota, granted by the Congress of the United States to aid in the construction and equipment of the railroads of the Northern Pacific Railroad Company, for which patents have not issued, and which have not been selected by and certified to said railroad company, but to which said railroad company is entitled under said grants of Congress, and all rights of said railroad company to receive from the United States any lands within said county and state, which have not been certified or patented to 538 said railroad company, whether under the grant expressed in the act of Congress of July 2, 1864, or under any subsequent grant, by way of indemnity or otherwise, to said railroad company, together with all the right, title, interest and claim in or to any such lands, and all its rights to receive from the United States patents therefor, and also all mineral and other reservations and exceptions of every nature and description contained in any conveyance or contract in respect of lands within said county and state at any time made by said railroad company or its Receivers or otherwise, and all rights, benefits, equity of redemption, title, interest or claim of said railroad company thereunder and in and to all lands granted to it by the Congress of the United States within said county and state and which may not be included in the sale under said decrees under the foregoing description of lands for which letters patent have issued to said railroad company, and the right to receive lands for which letters patent have not issued but which have been selected by and certified to said company, whether or not such lands are now held by or have been heretofore sold or contracted to be sold by said railroad company or such Receivers, or are claimed to have been sold under judicial proceedings or for non-payment of taxes or for any cause soever, and whether or not the same stand in the name of said railroad company; it being the intention to include every possible right, title and interest of said railroad company in and to any of the lands within said county and state covered by any grant to said railroad company by the Congress of the United States and which may not be included in the sale under said decrees under the foregoing description of lands for which letters patent have issued to said railroad company, and the right to receive lands for which letters patent have not issued, but which have been selected by and certified to said company, all subject, however, to a certain mortgage or deed of trust dated the first day of January, 1881, known as the General First Mortgage of said Northern Pacific Railroad Company and executed by it to the Central Trust Company of New York as trustee.

To Have and to Hold, all and singular, the above mentioned and described property and premises hereby conveyed or intended so to be, unto the said party of the third part, its successors and assigns, to its and their own proper use, benefit and behoof, forever.

Subject, However, with respect to such of the lands hereinbefore described as have heretofore been contracted to be sold by the Northern Pacific Railroad Company or by its Receivers, to the rights of the purchasers under said contracts

In Witness Whereof, the said Alfred L. Cary, as such Special Master, party of the first part, and the said Edwin H. McHenry and Frank G. Bigelow, as such Receivers, parties of the second part, have hereunto set their hands and seals the day and year first above written.

ALFRED L. CARY, [Seal.]
As Special Master.
FRANK G. BIGELOW, [Seal.]
As one of the Receivers of the
Northern Pacific Railroad Company.
EDWIN H. McHENRY, [Seal.]
As one of the Receivers of the
Northern Pacific Railroad Company.

Signed, sealed and delivered
in presence of:
Edward J. Paul,
John W. B. Van Houten,
As to Signatures of
Alfred L. Cary and Frank G. Bigelow.
W. F. Von Deyn,
Earl L. Marvin,
As to signature of Edwin H. McHenry.

U S I R S
$118.00
Cancelled.

539 Internal Revenue Stamps in the sum of $118.00 are hereunto affixed and cancelled.

State of Wisconsin,
County of Milwaukee—ss.

On this 23d day of September, A. D. 1899, before me personally appeared Alfred L. Cary, to me known to be one of the persons described in any who executed the foregoing instrument as Special Master, and also known to me to be Special Master as therein described, and acknowledged to me that he executed said instrument as his free act and deed as such Special Master, for the uses and purposes therein mentioned and contained.

Edward J. Paul
Milwaukee County,
Wis., Notary Public.

In Witness Whereof, I have hereunto set my hand and seal of office as Notary Public in and for the State of Wisconsin, at the City of Milwaukee, in said County of Milwaukee and State of Wisconsin, this 23d day of September, 1899.

EDWARD J. PAUL,
Notary Public,
Residing in Milwaukee County, Wisconsin.

State of Wisconsin,
County of Milwaukee—ss.

On this 23d day of September, A. D. 1899, before me personally appeared Frank G. Bigelow, to me known to be one of the persons described in and who executed the foregoing
540 instrument as one of the Receivers of the Northern Pacific Railroad Company, and also known to me to be one of said Receivers as therein described, and acknowledged to me that he executed said instrument as his free act and deed as such Receiver, for the uses and purposes therein mentioned and coatained.

Edward P. Paul
Milwaukee County
Wis., Notary Public

In witness whereof, I have hereunto set my hand and seal of office as Notary Public in and for the State of Wisconsin, at the City of Milwaukee, in said County of Milwaukee and State of Wisconsin, this 23d day of September, 1899.

EDWARD J. PAUL,
Notary Public,
Residing in Milwaukee County, Wisconsin.

State of Minnesota,
County of Ramsey—ss.

On this 25th day of September, A. D. 1899, before me personally appeared Edwin H. McHenry, to me known to be one of the persons described in and who executed the foregoing instrument as one of the Receiver of the Northern Pacific Railroad Company, and also known to me to be one of said Receivers as therein described, and acknowledged to me that he executed said instrument as his free act and deed as such Receiver, for the uses and purposes therein mentioned and contained.

Notary Public
Ramsey County
Minn.

In witness whereof, I have hereunto set my hand and seal of office as Notary Public in and for the State of Minnesota, at the City of St. Paul, in said County of Ramsey and State of Minnesota, this 25th day of September, 1899.

W. F. VON DEYN,
Notary Public,
Residing in Ramsey County, Minnesota.

541 State of Minnesota,
County of St. Louis—ss.

I, A. Lofgren, Register of Deeds of said County, do hereby certify that the within is a true and correct copy of the records in my office, as found in Book 177 of Deeds on page 333. That I have compared such copy with the original record and that it is a correct transcript therefrom.

Dated this 16th day of Jan. A. D. 1902.

A. LOFGREN,
Register of Deeds.
By Thos. Clark, Deputy.

[Ten cents canceled Rev. Stamp.]

EXHIBIT No. 82—Offered in evidence at page 226, this record:

542 Special Master's and
Receivers' Deed
Lake County, Minnesota.

No. 6700. Filed for record Feb. 1st, 1900 at 10 o'clock a. m.

An Indenture, Made the 22nd day of September, in the year one thousand eight hundred and ninety-nine, between

Alfred L. Cary, as Special Master, appointed as such by the Circuit Court of the United States for the Eastern District of Wisconsin, in the cause in equity, and by the Circuit Courts of the United States in other districts in causes ancillary thereto as hereinafter mentioned, party of the first part;

Edwin H. McHenry and Frank G. Bigelow, as Receivers of the Northern Pacific Railroad Company, a corporation created by an act of Congress of the United States, approved July 2, 1864, parties of the second part, and

Northern Pacific Railway Company, a railroad corporation organized and existing under the laws of the State of Wisconsin, party of the third part:

Whereas, at the January term, A. D. 1896, of the Circuit Court of the United States for the Eastern District of Wisconsin—to wit, on the 25th day of May, 1896—in a certain cause in equity pending therein, wherein The Farmers' Loan and Trust Company is complainant and the Northern Pacific Railroad Company, Philip B. Winston, George E. Sheldon, William S. P. Prentice and William C. Sheldon, Jr., surviving partners of the firm of William C. Sheldon & Company, and others are defendants, a certain supplemental decree was entered, whereby the said Edwin H. McHenry and Frank G. Bigelow were appointed Receivers of certain lands, assets, property and effects, real and personal, of the said Northern Pacific Railroad Company, including the lands, rights to lands and property hereinafter mentioned and described, and all of which the said defendant Northern Pacific Railroad Company was, by said decree, ordered to forthwith convey unto said Receivers as such, their successors and assigns.

And whereas, certain decrees auxiliary to that above mentioned and of like character, force and effect, were afterwards entered in like causes pending between the same parties in the Circuit Courts of the United States for the following districts, viz: in the District of Minnesota and in the District of North Dakota.

And whereas, at the January term, A. D. 1896, of the said Circuit Court of the United States for the Eastern District of Wisconsin—to wit, on the 25th day of May, 1896—in said cause in equity pending therein, it was, among other things, ordered and decreed by said Court (1) that all the lands granted by Congress to aid in the construction and equipment of the railroads of the defendant, the Northern Pacific Railroad Company, and all rights of said defendant under the several land grants made to it by Congress in and over such lands lying within

the State of Minnesota, and State of North Dakota east of the Missouri River, should be sold at public sale to the highest bidders in the manner specified in said decree; (2) that such sales should be made by Alfred L. Cary, Esq., who was thereby appointed Special Master for that purpose; (3) that all of said lands for which letters patent had issued to said defendant, Northern Pacific Railroad Company, and the right to
543 receive lands for which letters patent had not issued but which had been selected by and certified to said company, should be sold in single sections or subdivisions thereof; (4) that all lands for which patents had not issued and which had not been selected by and certified to said company, but to which said Northern Pacific Railroad Company was entitled under said grants of Congress, and all rights of said Northern Pacific Railroad Company to receive from the United States any lands which had not been certified or patented to said railroad company, whether under the grant expressed in the act of Congress of July 2, 1864, or under any subsequent grant, by way of indemnity or otherwise, to said company, together with all the right, title, interest and claim in or to any such lands, and all its rights to receive from the United States patents therefor, and also all right, title, interest and equity in and to any other lands to which the said Northern Pacific Railroad Company might be entitled and which might have accrued or should thereafter accrue to it under any of said land grants, and also all right, title, equity and interest in and to any lands covered by or included in any of said land grants and not thereinbefore specified, should be sold in one parcel as to such lands and rights in each county named in said decree and at the place in each such county designated in said decree; (5) that the Receivers appointed by said Court in said cause were, by said decree, required to file schedules showing the lands and rights to be sold under said decree with the Clerk of said Court and with the Clerks of the United States Circuit Courts for the Districts of Minnesota and North Dakota respectively, at least thirty days before the date of the first sale to be made under said decree; (6) that such sales should respectively be made upon a day or days to be fixed by said Special Master and notice of the times and places of said sales, describing the property and rights to be sold and referring to said decree, should be published respectively once a week for at least four weeks prior to such sales, respectively, in a newspaper printed, regularly issued and having a general circulation in the county and state where said sales, respectively, were to be made as provided and designated in said decree.

And Whereas, certain decrees ancillary to that of May 25th, 1899, above mentioned and of like character, force and effect, were entered June 5th, 1899, in like causes pending between the same parties in the Circuit Courts of the United States for the following districts, viz: in the District of Minnesota and in the District of North Dakota.

And Whereas, said party of the first part, in pursuance of said decrees and a notice of sale given by him as required by said decrees, did, at one of the places and in one of the counties specified in said decrees as at and in which one of said sales was to be made, to wit: at the Court House at Two Harbors, in the County of Lake and State of Minnesota, and at the time specified in said notice of sale for the sale in said county, offer at public sale all the lands within said county granted by Congress to aid in the construction and equipment of the railroads of the defendant, Northern Pacific Railroad Company, and all rights of said defendant under the several land grants made to it by Congress in any such lands lying within said county, due notice of the time and place of such sale having been given pursuant to said decrees and according to law, and the said decrees having been complied with in all things touching and relating to said sale.

And Whereas, at such sale, all of said lands within said County of Lake, and State of Minnesota, for which letters patent had issued to said defendant, Northern Pacific Railroad Company, and the right to receive lands for which letters patent had not issued but which had been selected by and certified to said Company, were offered and sold in single sections or subdivisions thereof, and were struck off to the said party of the third part for the respective sums set forth
544 in the schedule marked A 3, (except as to the lands represented by "Item Number" 59 in said schedule) annexed to the reports of such sales made by said party of the first part and hereinafter referred to, such sums being the highest sums bidden respectively therefor.

And Whereas, at such sale, all of said lands within the County of Lake, in the State of Minnesota, for which patents had not issued and which had not been selected by and certified to said Northern Pacific Railroad Company, but to which said railroad company was entitled under said grants of congress, and all rights of said railroad company to receive from the United States any lands within said county and state which had not been certified or patented to said railroad company, whether under the grant expressed in the act of congress of July 2, 1864, or under any subsequent grant by way of indemnity or otherwise, to said railroad company, together with all the right, title, interest and claim in or to any such lands and all its rights to receive from the United States, patents therefor, and also all mineral and other reservations and exceptions of every nature and description contained in any conveyance or contract in respect of lands within said county and state at any time made by said railroad company or its Receivers or otherwise, and all rights, benefits, equity of redemption, title, interest or claim of said railroad company thereunder, and in and to all lands granted to it by the Congress of the United States within said county and state and which might not be included in the sales under said decrees under the foregoing description of lands for which letters patent had issued to said railroad company, and the right to receive lands for which letters patent had not issued, but which had been selected by and certified to said company, whether or not such lands were then held by or had been theretofore sold or contracted to be sold by said railroad company or such Receivers, or were claimed to have been sold under judicial proceedings, or for non-payment of taxes or for any cause soever, and whether or not the same stood in the name of said railroad company, it having been the intention to include every possible right, title and interest of said railroad company in and to any of the lands within said county and state covered by any grant to said railroad company by the Congress of the United States, and which might not be included in the sale under the said decrees under the foregoing description of lands for which letters patent had issued to said railroad company and the right to receive lands for which letters patent had not issued, but which had been selected by and certified to said company, all subject, however, to a certain mortgage or deed of trust dated the first day of January, 1881, known as the General First Mortgage of said Northern Pacific Railroad Company, and executed by it to the Central Trust Company of New York as trustee, were offered and sold in one parcel and were struck off to said party of the third part for the sum specified in said Schedule A 12 of said reports of sales as the amount at which the lands and rights represented by "Item Number" 59 of said schedule were struck off, such sum being the highest sum bidden therefor.

And Whereas, the said sales with respect to such of the lands sold as had theretofore been contracted to be sold by the Northern Pacific Railroad Company or by its Receivers, were made subject to the rights of the purchasers under said contracts.

And Whereas, said party of the first part, as such Special Master, did duly make his reports of said sales to and file

the same with the said Circuit Court of the United States for the Eastern District of Wisconsin, on the 25th day of August, 1899, and also to and with the said Circuit Court of the United States for the District of Minnesota, on the 26th day of August, 1899, which said reports and the sales therein reported were, upon due notice to all parties, duly confirmed by
545 the decrees of said Circuit Courts, respectively, entered on the following dates, viz., in the Eastern District of Wisconsin, on the 16th day of September, 1899, and in the District of Minnesota, on the 20th day of September, 1899.

And Whereas, in and by said decrees of confirmation, the said Special Master was authorized to sign, seal, execute and deliver to the said party of the third part deeds of conveyance and assignments, conveying to it all and singular the property, premises and rights of every kind and description so sold as aforesaid pursuant to the terms and conditions of such sale, and said Receivers were also ordered to make conveyances and assignments to the said party of the third part, its successors or assigns, of said lands and rights to and in respect of land.

And Whereas, said party of the third part has fulfilled all the terms of purchase and made full payment of such bids as provided by such decrees.

Now Therefore, This Indenture Witnesseth, that said Alfred L. Cary, as such Special Master, party of the first part, in order to carry into effect the sales made by him as aforesaid to the party of the third part in pursuance of the said decrees and in conformity to law and in consideration of the premises and of the prices and sums so bidden as aforesaid by the said party of the third part and by it to him paid, amounting in the aggregate to the sum of Twelve Thousand Six Hundred Dollars, the receipt whereof is hereby acknowledged, and the said Edwin H. McHenry and Frank G. Bigelow, as such Receivers, parties of the second part, pursuant to the authority and direction to them given in and by said several decrees as hereinbefore recited and by reason of the premises and for the considerations hereinbefore expressed, have granted, bargained, sold, assigned, aliened, released, conveyed and confirmed, and the said parties of the first and second parts by these presents do grant, bargain, sell, alien, release, convey and confirm unto the said Northern Pacific Railway Company, party of the third part hereto, and to its successors and assigns, forever, the following described property embraced and included in said decrees and thereunder and thereby authorized and directed to be sold, viz.:

All lands within the said County of Lake, in the said State of Minnesota, granted by the Congress of the United States to aid in the construction and equipment of the railroads of the Northern Pacific Railroad Company, for which letters patent have issued to said railroad company, and the right of said railroad company to receive the lands within said last mentioned county under said grants of Congress for which letters patent have not issued, but which have been selected by and certified to said company, being all the lands and rights in respect of lands described and set forth in said schedule marked A 3, annexed to and forming part of said Special Master's reports to the said Circuit Courts of the United States of sales in said State of Minnesota, and filed in the offices of the clerks of said courts as aforesaid, except the lands and rights represented by "Item number" 59 in said schedule, together with all the right, title, interest, benefit, claim and demand of said Northern Pacific Railroad Company, and the Receivers thereof in, to, under or by reason of the certain contracts made by said Company or Receivers for the sale of certain of said lands designated upon said schedule by a specific number as to the portions of said lands covered thereby, and all moneys due and to grow due thereunder.

Also all lands within the said County of Lake, in the said State of Minnesota, granted by the Congress of the United States to aid in the construction and equipment of the railroads of the Northern Pacific Railroad Company, for which patents have not issued, and which have not been selected by and certified to said railroad company, but to which said railroad company is entitled under said grants of Congress, and all rights of said railroad company to receive from the United States any lands within said county and state, 546 which have not been certified or patented to said railroad company, whether under the grant exressed in the act of Congress of July 2, 1864, or under any subsequent grant, by way of indemnity or otherwise, to said railroad company, together with all the right, title, interest and claim in or to any such lands, and all its rights to receive from the United States patents therefor, and also all mineral and other reservations and exceptions of every nature and description contained in any conveyance or contract in respect of lands within said county and state at any time made by said railroad company or its Receivers or otherwise, and all rights, benefits, equity of redemption, title, interest or claim of said railroad company thereunder and in and to all lands granted to it by the Congress of the United States within said county and state and which may not be included in the sale under said decrees under the foregoing description of lands for which letters patent have issued to said railroad company, and the right to receive lands for which letters patent have not issued but which have not been selected by and certified to said company, whether or not such lands are now held by or have been heretofore sold or contracted to be sold by said railroad company or such Receivers, or are claimed to have been sold under judicial proceedings or for non-payment of taxes or for any cause soever, and whether or not the same stand in the name of said railroad company; it being the intention to include every possible right, title and interest of said railroad company in and to any of the lands within said county and state covered by any grant to said railroad company by the Congress of the United States and which may not be included in the sale under said decrees under the foregoing description of lands for which letters patent have issued to said railroad company, and the right to receive lands for which letters patent have not issued, but which have been selected by and certified to said company, all subject, however, to a certain mortgage or deed of trust dated the first day of January, 1881, known as the General First Mortgage of said Northern Pacific Railroad Company and executed by it to the Central Trust Company of New York as trustee.

To have and to hold all and singular, the above mentioned and described property and premises hereby conveyed or intended so to be, unto the said party of the third part, its successors and assigns, to its and their own proper use, benefit and behoof, forever.

Subject However, with respect to such of the lands hereinbefore described as have heretofore been contracted to be sold by the Northern Pacific Railroad Company or by its Receivers to the rights of the purchasers under said contracts.

In Witness Whereof, the said Alfred L. Cary, as such Special Master, party of the first part, and the said Edwin H. McHenry and Frank G. Bigelow as such Receivers, parties of the second part, have hereunto set their hands and seals the day and year first above written.

ALFRED L. CARY. [Seal]
As Special Master.
FRANK G. BIGELOW. Seal][
As one of the Receivers of the Northern Pacific Railroad Company.
EDWIN H. McHENRY. [Seal]
As one of the Receivers of the Northern Pacific Railroad Company.

Signed, sealed and delivered
in presence of:
Edward J. Paul
John W. B. Van Houten,
As to Signatures of
Alfred L. Cary and Frank G. Bigelow.
W. F. Von Deyn,
Earl L. Marvin,
As to signatare of Edwin H. McHenry.

547 Internal Revenue Stamps in the sum of $13.00 are hereunto affixed and cancelled.

$10.00 10 00
Internal Revenue
Stamp affixed
and cancelled
A L C, E H & McH
F B B Sept. 22, 99.

$3.00 3 00
Internal Revenue
Stamp affixed
and cancelled
A L C, E H & McH
F B B. Sept. 22, '99.

State of Wisconsin,
County of Milwaukee—ss.

On this 23d day of September, A. D. 1899, before me personally appeared Alfred L. Cary, to me known to be one of the persons described in and who executed the foregoing instrument as Special Master, and also known to me to be Special Master as therein described, and acknowledged to me that he executed said instrument as his free act and deed as such Special Master, for the uses and purposes therein mentioned and contained.

In witness whereof, I have hereunto set my hand and seal of office as Notary Public in and for the State of Wisconsin, at the City of Milwaukee, in said County of Milwaukee and State of Wisconsin, this 23rd day of September, 1899.

Edward J. Paul
Notary Public
Milwaukee County
Wis.

EDWARD J. PAUL,
Notary Public,
Residing in Milwaukee
County, Wisconsin.

State of Wisconsin,
County of Milwaukee—ss.

On this 23d day of September, A. D. 1899, before me personally appeared Frank G. Bigelow, to me known to be one of the
persons described in and who executed the foregoing
548 instrument as one of the Receivers of the Northern Pacific Railroad Company, and also known to me to be one

of said Receivers as therein described, and acknowledged to me that he executed said instrument as his free act and deed as such Receiver, for the uses and purposes therein mentioned and contained.

In witness whereof, I have hereunto set my hand and seal of office as Notary Public in and for the State of Wisconsin, at the City of Milwaukee in said County of Milwaukee and State of Wisconsin, this 23d day of September, 1899.

Edward J. Paul
Notary Public
Milwaukee County
Wis.

EDWARD J. PAUL.
Notary Public,
Residing in Milwaukee
County, Wisconsin.

State of Minnesota,
County of Ramsey—ss.

On this 25th day of September, A. D. 1899, before me personally appeared Edwin H. McHenry, to me known to be one of the persons described in and who executed the foregoing instrument as one of the Receivers of the Northern Pacific Railroad Company and also known to me to be one of said Receivers as therein described, and acknowledged to me that he executed said instrument as his free act and deed as such Receiver, for the uses and purposes therein mentioned and contained.

In Witness Whereof, I have hereunto set my hand and seal of office as Notary Public in and for the State of Minnesota, at the City of St. Paul, in said County of Ramsey and State of Minnesota this 25th day of September, 1899.

Notarial Seal
Ramsey County
Minn.

W. F. VON DEYN,
Notary Public,
Residing in Ramsey
County, Minnesota.

549 Office of Register of Deeds,
Lake County, Minnesota.

I, Charles M. Floathe Register of Deeds of said County and State do hereby certify that I have compared the foregoing paper writing with the original record now remaining in this office, and that the same is a correct transcript therefrom, and of the whole of said original record as the same appears in Book "O" of Deed Records at page 412.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal at the Court House in said County, this Fourteenth day of January, A. D. 1901.

[Official Seal]
CHARLES M. FLOATHE,
Register of Deeds.
By .... Deputy.

(Ten cents Canceled Rev. Stamp.)

550 EXHIBIT No. 43: Offered in evidence at page 23, this record:

This Indenture Made this 21st day of December, A. D. 1899, by and between the Northern Pacific Railroad Company, a corporation created by and existing under and by virtue of an act of the Congress of the United States of America entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's Sound on the Pacific coast, by the Northern route," approved July 2, 1864, party of the first part, and the Northern Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, party of the second part, Witnesseth:

Whereas, at the January term A. D. 1899 of the circuit court of the United States for the eastern district of Wisconsin, to wit, on the 25th day of May, 1896, in a certain cause in equity pending therein, wherein The Farmers' Loan & Trust Company is complainant, and the Northern Pacific Railroad Company, Philip B. Winston, George R. Sheldon, William S. P. Prentice and William C. Sheldon, Junior, surviving partners of the firm of William C. Sheldon & Company, and others, are defendants, a certain sequestration decree was entered whereby Edwin H. McHenry and Frank G. Bigelow were appointed receivers of certain lands, assets, property and effects, real and personal, of the said Northern Pacific Railroad Company, including the lands, rights to lands and property hereinafter mentioned and described; and

Whereas, certain decrees ancillary to that above mentioned, and of like character, force and effect were afterwards entered in like causes pending between the same parties in the circuit courts of the United States for the following districts, viz: in the district of Minnesota and in the district of North Dakota; and

Whereas, at the January term A. D. 1899 of the said circuit
court of the United States for the eastern district of
551 Wisconsin, to wit, on the 25th day of May, 1899, in said
cause in equity pending therein, it was, among other things, ordered and decreed by said court that all the lands granted by congress to aid in the construction and equipment of the railroads of the defendant, the said Northern Pacific Railroad Company, and all rights of the said defendant under the several land grants made to it by congress in any such lands lying within the State of Minnesota and the state of North Dakota, east of the Missouri River, should be sold at public sale to the highest bidder in the manner specified in said decree, and that such sale should be made by Alfred L.

Cary, Esquire, who was thereby appointed special master for that purpose; and

Whereas, certain decrees ancilliary to that of May 25, 1899, above mentioned, and of like character, force and effect were entered on June 5, 1899 in like causes pending between the same parties, in the circuit courts of the United States for the following districts, viz: the district of Minnesota and the district of North Dakota; and

Whereas, the said Alfred L. Cary, Esquire, so appointed special master as aforesaid, in pursuance of said decrees and notices of sale given by him as required by said decrees, did, at the places specified in said decrees and at the times specified in said notices of sale, offer at public sale all the lands in the state of Minnesota and in the state of North Dakota, east of the Missouri River, granted by Congress to aid in the construction and equipment of the railroads of the said Northern Pacific Railroad Company, and all rights of the said Northern Pacific Railroad Company under the several land grants made to it by congress in any such lands lying within the said state of Minnesota and said state of North Dakota east of the Missouri River; and

Whereas, at such sales all of the said lands and rights to
such lands so granted to the said Northern Pacific Rail-
552 road Company were offered and sold, as required by
said decree, and were struck off to the said Northern
Pacific Railway Company, the party of the second part hereto,
as the highest and best bidder therefor; and

Whereas, the said Alfred L. Cary, Esquire, as such special master, did thereafter duly make his report of the said sales to, and file the same with, the said Circuit Court of the United States for the eastern district of Wisconsin on the 25th day of August, 1899, and also to and with the Circuit Court of the United States for the district of Minnesota on the 26th day of August, 1899, and also to and with the said circuit court of the United States for the district of North Dakota on the 28th day of August, 1899, which said reports and the sales therein reported were duly confirmed by the decrees of the said circuit courts respectively, entered on the following dates, viz: in the eastern district of Wisconsin on the 16th day of September, 1899 in the district of Minnesota on the 20th day of September, 1899, and in the district of North Dakota on the 21st day of September, 1899, and

Whereas, in and by said decrees of confirmation the said special master was authorized to sign, seal execute and deliver to the said Northern Pacific Railway Company deeds of conveyance, conveying to it all and singular the property, premises and rights of every kind and description so sold as aforesaid, pursuant to the terms and conditions of such sale; and said Edwin H. McHenry and Frank G. Bigelow, as such receivers, were also ordered to make conveyances to the said Northern Pacific Railway Company of the said lands and rights to and in respect of land; and

Whereas, said special master and said receivers have, in pursuance of said decree, signed, sealed, executed and delivered to the said Northern Pacific Railway Company, the said conveyances thereby authorized; and

553 Whereas, in and by said decrees of confirmation it was further ordered and decreed that by way of further assurance and confirmation of title to the said Northern Pacific Railway Company, as such purchaser, the said Northern Pacific Railroad Company, by its proper officers and under its corporate seal, should sign, seal, execute, acknowledge and deliver to the said Northern Pacific Railway Company as such purchaser, its deed or deeds of conveyance, assignment, transfer, release and further assurance of all said lands and rights to land, so sold as aforesaid to said Northern Pacific Railway Company, as such purchaser;

Now, Therefore, the said party of the first part in compliance with said decrees and for and in consideration of the sum of one dollar ($1.00) paid unto the said party of the first part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has conveyed, aliened, transferred, released and assigned, and by these presents does convey, alien, transfer, release and assign unto the said party of the second part, its successors and assigns in title, all its right, title, interest and claim in, to and upon all lands situated within the state of Minnesota and the state of North Dakota, east of the Missouri River, granted by the congress of the United States to aid in the construction and equipment of the railroads of the said Northern Pacific Railroad Company for which patents have issued, and the right to receive lands under said grants of congress for which patents have not issued, but which have been selected and certified to the said Northern Pacific Railroad Company, and also all lands granted by the congress of the United States, situated in the state of Minnesota and the state of North Dakota east of the Missouri River, granted by the congress of the United States to aid in the construction and equipment of the railroads of the said Northern Pacific Railroad Company for which patents have not issued, and which have not been
554 selected by or certified to said railroad company, but to which said railroad company became entitled under said acts of congress and all rights to receive from the United

States lands in said state of Minnesota and said state of North Dakota east of the Missouri River, which have not been certified or patented to the said Northern Pacific Railroad Company whether under the grant expressed in the act of Congress of July 2, 1864, or under any subsequent grant, by way of indemnity, or otherwise, and all right, title, interest and claim in or to any such lands, and all rights to receive patents therefor from the United States.

To Have and To Hold the said granted and conveyed lands, premises rights and privileges, with the appurtenances, unto the said party of the second part, its successors and assigns forever.

And the said party of the first part, for itself and its successors, does by these presents covenant and agree to and with the said party of the second part, its successors and assigns, that it will hereafter upon the demand or request of the party of the second part, its successors or assigns, make, execute and deliver to the party of second part, its successors and assigns, such further conveyance, transfer, assignment or deed of any or all of the premises, rights, privileges and appurtenances hereby intended to be conveyed, as to the party of the second part or its counsel learned in the law, shall seem meet and proper, and that it will execute and deliver any further instruments, agreements, transfers or deeds that may be requisite or necessary to more fully and in detail comply with said decrees so entered in said circuit courts of the United States, viz: in the eastern district of Wisconsin on the 16th day of September, 1899, in the state of Minnesota on the 20th day of September, 1899, and in the State of North Dakota on the 21st day of September, 1899.

In Witness Whereof, the said party of the first part has
caused these presents to be sealed with its corporate
555 seal and signed by its president the day and year first
above written.

NORTHERN PACIFIC RAILROAD COMPANY,
By W. J. Curtis, Vice-President.

Signed, sealed and delivered
in presence of:
John J. Gremey,
Edward J. Walsh.

Attest:
GEORGE H. EARL, Secretary.

Corporate seal Northern
Pacific Railroad Company.

State of New York,
County of New York—ss.

On this 21st day of December, A. D. 1899, before me personally appeared W. J. Curtis to me personally known, who, being by me duly sworn, did say that he is the Vice President of the Northern Pacific Railroad Company, the corporation which executed the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said W. J. Curtis, acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City of New York, the day and year last aforesaid.

JOHN J. TIERNEY, Notary Public,
Kings County, certi. filed in
New York County, N. Y.

Indorsed: Recorded. Indexed. Compared.
Document 4576.

Office of Register of Deeds.

State of North Dakota
County of Sargent—ss.

556 I hereby certify that the within instrument was filed in this office on the 22 day of January A. D. 1900, at 9 o'clock A. M., and duly recorded in Book M of Deeds on page 99.

H. H. TAYLOR,
Register of Deeds.
Fees 3.20 By .... Deputy.
(Official Seal)

Document Number 11104.

Office of Register of Deeds,
County of Richland, North Dakota—ss.

I hereby certify that the within instrument was filed in this office for record on the 2nd day of February A. D. 1900, at 8 o'clock A. M. and duly recorded in Book "12" of Deeds on pages 191-2-3 & 4.

PETER JOHNSON, Register of Deeds.
(Official Seal) Fees $3.20.

Document Number 9971.

Office of Register of Deeds,
County of Barnes, North Dakota.

I hereby certify that the within instrument was filed in this office for record on the 31st day of December, A. 1900, at

10:00 o'clock A. M. and was duly recorded in Book 14 of Deeds page 341.

FRANK SANFORD,
Register of Deeds.
By .... Fee $3.20 .... Deputy.

"G" (Official Seal) Indexed.

Doc. No. 4536.

State of North Dakota,
County of Ransom—ss.
Office of the Register of Deeds.

—— hereby certify that the within instrument was filed in this office for record on the 8 day of Jany. A. D. 1900 at 1:00 o'clock P. M., and was duly recorded in Book B of Mcl Records on page 461.

HERMAN SHIRLEY Register of Deeds.
By .... .Deputy.

Fees $3.20. (Official Seal)

Document No. 7772.

Register of Deeds Office
State of North Dakota,
County of Traill—ss.

I hereby certify that the within instrument was filed in this office for record on the 3rd day of December A. D. 1900 at 3 o'clock P. M. and was duly recorded in Book 6 of Deeds page 421 to 425 incl.

O. N. HEM, Register of Deeds.
By .... Deputy.

(Official Seal)

557 Document No. 17324.

State of North Dakota,
County of Cass,
Register's Office—ss.

I hereby certify that the within instrument was filed in this office for record on the 24th day of Decr. A. D. 1900 at 3 o'clock P. M., and was duly recorded in Book 64 of Deeds page 151-54.

W. F. REDMON,
Register of Deeds.
By F. G. Brown, Deputy.

Fees $3.20.

(Official Seal)

Document No. 5243.

Register's Office,
Steele County, North Dakota—ss.

Filed for record at 11 o'clock A. M. And recorded in Book N of Deeds at page 557.

OSCAR BARRETT,
Register.

Fees $3.20

(Official Seal)

Indexed.
Numerical...
Grantor.....
Grantee.....
Marginal....
Compared....

Document No. 7036.

County of Dickey,
State of North Dakota—ss.

I hereby certify that the within instrument was filed in this office and recorded on the 26th day of Nov. A. D. 1900 at 2 o'clock P. M. and was duly recorded in Book 21 of Deeds page 606.

A. L. BEGGS,
Register of Deeds.

(Official Seal)

By .... Deputy.

Compared with original by
Thos. H. Pressnell,
Examiner.

EXHIBIT No. 44:—Being a certified copy of the tract-books of the U. S. Land Office at St. Cloud, Minn., relating to lands referred to therein; and from the Register of Homestead Entries and Abstract of Pre-emption Declaratory Statements. Offered in evidence at page 90, Vol. 2, this record, and omitted under the Stipulation and Order.

558 COMPLAINANT'S EXHIBIT 44.
Offered in Evidence at Page 225, this Record.

559 Abstract of Declaratory Statements filed in the Land Office at....................during the month of ...., 188 , on lands which have ......been offered at public sale under the President's Proclamation.

No. of Statement Filed.	Date of Settlement.	Date When Filed.	NAME.	DESCRIPTION.	Section.	Town-ship.	Range	Remarks.
472	June 18, 1870	Dec. 30, 1870	Mons Olson	N E ¼ N W ¼, N ½ N E ¼ & S W ¼ N E ¼	21	136	43	

United States Land Office,
St. Cloud, Minn., Jany 19, 1901.

I, M. D. Taylor, Register of the Land Office do hereby certify that I have carefully compared the foregoing copy of the record of the Declaratory Statement of Mons Olson, with the original record of said entry upon the official entry book of said office, and that said copy is a full, true and correct transcript of said record as it appears upon the official entry.

M. D. TAYLOR, Register.

REGISTER OF ENTRIES made at the Land Office at .... under the Homestead Laws, fro

.... to the ....day of .... the same month, inclusive.

No. of Application.	Date of Application.	Tract Entered. Section or Part of Section.	No. of Section.	No. of Township.	No. of Range.	Quantity.		Name of Applicant.	RESIDENCE.	FEES.
						Acres.	100ths.			
735	June 9, 1870	Lots 8, 9, 10	5							
		SE ¼ NE ¼ Lot 3	8	133	40	160		Francis Pierz.	Otter Tail Co., Minn.	10
5392	Augt. 1, 1868	NE ¼ NE ¼	14							
		Lots 1, 2 & 3..........	13	133	40			Martin Kelly.		
463	Oct. 22, 1869	S ½ NW ¼ & N ½ SW ¼	35	136	40	160		Joseph Schmidt.	Stearns Co., Minn.	10
3332	September 14th, 1876 ..	NE ¼ NW ¼, N ½ NE ¼ & SW ¼ NE ¼ ...	21	136	43	160		Mons Olson.	Ottertail Co., Minn.	10

United States Land Office,
St. Cloud, Minn., January 19, 1901.

I, M. D. Taylor, Register of the Land Office do hereby certify that I have carefully compared the foregoing copy of the record of the entries aforesaid with the original record of said entries upon the official entry book of said office, and that said copy is a full true and correct transcript of said record as it appears upon the official entry book.

M. D. TAYLOR, Register.

HOMESTEAD ENTRIES.

.... under the Homestead Laws, from the .... day of ....190...

..........day of .... the same month, inclusive.

of ge.	Quantity.		Name of Applicant.	RESIDENCE.	FEES.		COMMISSIONS.		REMARKS.
	Acres.	100ths.							
0	160		Francis Pierz.	Otter Tail Co., Minn.	10		4		Canceled Jan'y 4, 1872. See Coms. letter Decr. 14, 1871.
0			Martin Kelly.						Canceled see Coms. letter "C" Aug. 19, 1876.
0	160		Joseph Schmidt.	Stearns Co., Minn.	10		4		Canceled June 30th, 1877 Coms. letter June 11, 1877. Final R & R No. 2563.
3	160		Mons Olson.	Ottertail Co., Minn.	10		4		Transmitted from D. S. No. 472. To remain intact awaiting final proof Com's letter F Apl. 23, 1877.

United States Land Office,
St. Cloud, Minn., January 19, 1901.
t I have carefully compared the fore-
ecord of said entries upon the official
transcript of said record as it appears
M. D. TAYLOR, Register.

DESCRIPTION OF TRACT.				Contents.		Rate Per Acre.	Purchase Money.	NAME OF THE PURCHASER.	DATE OF SALE.	Number of Receipt and Certificate of Purchase.
Part of Section.	Section.	Township.	Range.	Acres.	100ths.	Dollars. Cents.	Dollars. Cents.			
Se ¼ & Lots 9, 10, 11, 12, 13 & 14..	7	133	31	374	35	1.25	467.94	Thomas H. Canfield	Sept. 28, 1870	5154
Nw ¼ ne ¼ & Lots 1, 2, 3, 10 & 13..	19	133	31	229	50	1.25	286.87	Thomas H. Canfield	Sept. 28, 1870	5153
S ½ nw ¼, e ¼ sw ¼ nw ¼ & sw ¼...	19	133	33	197	31	1.25	246.61	Charles Gilman	Oct. 7, 1870	5157
S ½ ne ¼ & s ½ nw ¼............	1	132	34	160		M. B. L. Wt. 109	881	Charles Gilman	Oct. 8, 1870	4215
Nw ¼ ne ¼ & n ½ nw ¼..........	1	132	34	133	46	1.25	166.82	Charles Gilman	Oct. 1, 1870	5161
E ½ sw ¼ & sw ¼ sw ¼..........	1	132	34	120		M. B. L. Wt. No.	62520, 1855	Charles Gilman	Oct. 8, 1870	4214
Ne ¼ se ¼ & w ½ se ¼ Sec. 1, & nw ¼ ne ¼....................	12	132	34	160		M. B. L. Wt. No.	110156 Act 1855	Charles Gilman	Oct. 10, 1870	4217
East half........................	5	132	34	328	47	1.25	410.59	A. B. Nettleton	Nov. 1, 1870	5176
E ½ sw ¼ & sw ¼ sw ¼........	1	133	34	120		1.25	150.	George C. Thomas	Sept. 28, 1870	5147
W ½ nw ¼.....................	1	133	34	79	60	1.25	99.50	Hester Gilman	Sept. 21, 1870	5128
All	3	133	34	628	40	1.25	785.50	Thomas H. Canfield	Sept. 24, 1870	5132
Se ¼ & se ¼ ne ¼............	5	133	34	200		1.25	250.	George C. Thomas	Sept. 28, 1870	5149
Sw ¼............................	9	133	34	160		A. C. S. No. 122	5 Maine	Charles Gilman	Aug. 24, 1870	3109
E ½ ne ¼ & e ½ se ¼.........	9	133	34	160		M. B. L. Wt. 109	281 Act 1855	Clara C. McClure	Sept. 20, 1870	4213
S ½ ne ¼ & se ¼.............	11	133	34	240		1.25	300.	George C. Thomas	Sept. 28, 1870	5148
W ½............................	11	133	34	320		1.25	400.	Hester Gilman	Sept. 21, 1870	5127
N ½ sw ¼ & se ¼ sw ¼.........	15	133	34	120		M. B. L. Wt. No.	16676 Act 1855	Henry VanAernam, James Woring & Horatio Stilweil	Sept. 14, 1870	4206
Se ¼............................	15	133	34	160		“ “	109993 “	Same	“ “ “	4205
Ne ¼............................	15	133	34	160		“ “	110038 “	Same	“ “ “	4203
Nw ¼............................	15	133	34	160		“ “	11000 “	Same	“ “ “	4204
All	17	133	34 a	nd						
N ½............................	20	133	34	960		1.25	1200.	Dolson B. Searle	August 24, 1870	5097
S ½ Sec. 19 ne ¼ Sec. 30 all of Sec. 29 & w ½..................	28	133	34	1435	64	1.25	1794.55	Hester Gilman	August 24, 1870	5098
Sw ¼............................	21	133	34	160		A. C. S. 5663 N.	Y.	Charles Gilman	Aug. 24, 1870	3102
All	31	133	34	636	46	1.25	795.57	Geo. F. Stevens	Oct. 7 1870	5163
North Half.....................	33	133	34	320		1.25	400.	George C. Thomas	Sept. 28, 1870	5151
Nw ¼............................	35	133	34	160		M. B. L. Wt. No.	110223 Act 1855	Hester Gilman	Oct. 10, 1870	4216
E ½ sw ¼......................	35	133	34	80		1.25	100.	Same	Oct. 1 1870	5158
Sw ¼............................	9	133	35	160		M. B. L. Wt. 110	082 1855	J. G. Smith	Oct. 24, 1870	4223
All	13	133	35	640		1.25	800.	George C. Thomas	Sept. 28, 1870	5143
Lots 8 & 9.....................	5	133	40	71	12	2.50	177.80	Anton C. Berg	Jany. 11, 1888	3174
H. E. Lot 10....................	5	133	40	20	50	2.50	Addl. H. E.	Even H. Glende	Sept. 1st, 1885	8436
Final “	“	“	“	“	“	“	2.85	“ “ “	Oct. 19, 1886	5390
Lot 2............................	13	133	40	45	50	2.50	113.75	Johanus Vidness	Dec. 15, 1885	3074
Lot 3............................	13	133	40	40		2.50	74.62	Charles M. Evenson	Oct. 15, 1884	2979
Tract ne ¼.....................	33	136	40	154	05	A. C. Scrip No.	5943 N. Y.	Nehemiah P. Clarke	May 13, 1870	253
Tract se ¼.....................	33	136	40	159	71	A. C. Scrip No. 5	613 N. Y.	Henry C. Wait	May 12, 1870	251
S ¼ nw ¼......................	35	136	40	80		2.50	Home. App'n	Peter Silbernagle	Feb'y 11, 1880	5983
“	“	“	“	“	“	“	Final	“	May 22, 1884	4842
Ne ¼............................	9	136	43	160		A. C. Scrip. No. 1	815 Term Act 1862	Wesley F. Cowles	Sept. 30, 1871	415
Nw ¼............................	9	136	43	160		A. C. Scrip No. 1	67 S. Car'a	Charles T. Rhodes	January 20, 1871	301
Ne ¼ nw ¼, n ½ ne ¼ & sw ¼ ne ¼..	21	136	43	160		Final Home'd		Mons Olson	Nov. 20, 1878	2563

I, M. D. Taylor, Register
going copy of the record of
tract books of said office, and
upon the official tract book.

SHIP No.................... RANGE No.................... DISTRICT OF....................

Money. Dollars. Cents.	NAME OF THE PURCHASER.	DATE OF SALE.	Number of Receipt and Certificate of Purchase.	TO WHOM PATENTED.	DATE OF PATENT.	WHERE RECORDED.	
						Volume.	Page.
467.94	Thomas H. Canfield	Sept. 28, 1870	5154	Thos. H. Canfield	Dec. 10, 1870	8	501
286.87	Thomas H. Canfield	Sept. 28, 1870	5153	Thos. H. Canfield	Dec. 10, 1870	8	500
246.64	Charles Gilman	Oct. 7, 1870	5157	Chas. Gilman	June 5, 1891	9	2
	Charles Gilman	Oct. 8, 1870	4215	Charles Gilman	Feby. 3, 1883	549	437
166.82	Charles Gilman	Oct. 1, 1870	5161	Chas. Gilman	June 5, 1871	9	6
5	Charles Gilman	Oct. 8, 1870	4214	Charles Gilman	July 14, 1871	507	243
1855	Charles Gilman	Oct. 10, 1870	4217	Chas. Gilman	Apr. 20, 1871	507	169
410.59	A. B. Nettleton	Nov. 1, 1870	5176	A. B. Nettleton	June 5, 1871	9	18
150.	George C. Thomas	Sept. 28, 1870	5147	Geo. C. Thomas	Dec. 10, 1870	8	494
99.50	Hester Gilman	Sept. 21, 1870	5128	Hester Gilman	Dec. 10, 1870	8	475
785.50	Thomas H. Canfield	Sept. 24, 1870	5132	Thomas H. Canfield	Dec. 10, 1870	8	479
250.	George C. Thomas	Sept. 28, 1870	5149	Geo. C. Thomas	Dec. 10, 1870	8	496
	Charles Gilman	Aug. 24, 1870	3109	Charles Gilman	Dec. 10, 1870	94	99
855	Clara C. McClure	Sept. 20, 1870	4213	Clara C. McClure	Dec. 29, 1870	507	156
300.	George C. Thomas	Sept. 28, 1870	5148	Geo. C. Thomas	Dec. 10, 1870	8	495
400.	Hester Gilman	Sept. 21, 1870	5127	Hester Gilman	Dec. 10, 1870	8	474
1855	Henry VanAernam, James Woring & Horatio Stilwell	Sept. 14, 1870	4206				
	Same	" " "	4205				
	Same	" " "	4203				
	Same	" " "	4204				
1200.	Dolson B. Searle	August 24, 1870	5097				
1794.55	Hester Gilman	August 24, 1870	5098	Hester Gilman	Dec. 10, 1870	8	447
	Charles Gilman	Aug. 24, 1870	3102	Chas. Gilman	Dec. 10, 1870	94	92
795.57	Geo. F. Stevens	Oct. 7 1870	5163	Geo F. Stevens	June 5, 1871	9	8
400.	George C. Thomas	Sept. 28, 1870	5151	G. C. Thomas	Dec. 10, 1870	8	498
t 1855	Hester Gilman	Oct. 10, 1870	4216	Hester Gilman	Apr. 20, 1871	507	168
100.	Same	Oct. 1 1870	5158	Hester Gilman	June 5, 1871	9	3
	J. G. Smith	Oct. 24, 1870	4223	J. G. Smith	Apl. 20, 1871	507	174
800.	George C. Thomas	Sept. 28, 1870	5143	George C. Thomas	Dec. 10, 1870	8	490
177.80	Anton C. Berg	Jany. 11, 1888	3174	Covers letter F March 7-92 & F July 11, 1900			
E.	Even H. Glende	Sept. 1st, 1885	8436				
2.85	" " "	Oct. 19, 1886	5390	{ Even H. Glende	Nov. 15, 1888	12	186
113.75	Johannus Vidness	Dec. 15, 1885	3074	Johannes Vidnes	Jan. 23, 1890	5	237
74.62	Charles M. Evenson	Oct. 15, 1884	2979	Charles M. Evenson	Nov. 8, 1888	5	157
.	Nehemiah P. Clarke	May 13, 1870	253	Nehemiah P. Clarke	March 12, 1872	93	253
	Henry C. Wait	May 12, 1870	251	Henry C. Wait	March 12, 1872	93	251
pp'n	Peter Silbernagle	Feb'y 11, 1880	5983	{Approved			
	"	May 22, 1884	4842	{Letter F July 22, 85. Peter Silbernagel	Aug. 20, 1885	10	292
Act 1862	Wesley F. Cowles	Sept. 30, 1871	415	Premption Wesley F. Cowles	Sept. 15, 1873	93	417
n	Charles T. Rhodes	January 20, 1871	301	Premption Charles T. Rhodes	Sept. 10, 1872	93	314
	Mons Olson	Nov. 20, 1878	2563	Approved for Patent Letter F January 11, 1881 } Mons Olson	April 9, 1881	6	237

United States Land Office.
St. Cloud, Minn., Jan'y 5, 1901.

I, M. D. Taylor, Register of the Land Office do hereby certify that I have carefully compared the foregoing copy of the record of the aforesaid entries with the original record of said entries upon the official tract books of said office, and that said copy is a full, true and correct transcript of said record as it appears upon the official tract book.

M. D. TAYLOR, Register.

State of Minnesota,
County of Stearns—ss.

We, M. D. Taylor and Alvah Eastman, the Register and Receiver respectively of the Land Office of the United States at St. Cloud, Minnesota, hereby certify that we have carefully examined the annexed copy of a portion of the tract book kept at the said Land Office and in our custody, and that the same is a correct transcript of all that part of said tract book and the entries therein contained relating to any of the following described lands, all of which are situate in the St. Cloud Land District of the United States, viz.:

	Section.	Town.	Range.
Lots 11, 12, 13 and 14	7	133	31
E 1/2 of se 1/4	7	133	31
Lots 10 and 13	19	133	31
Nw 1/4 of ne 1/4, Lots 1, 2 and 3	19	133	31
E 1/2 of sw 1/4	19	133	33
Se 1/4 of ne 1/4	1	132	34
Sw 1/4 of ne 1/4	1	132	34
Nw 1/4 of ne 1/4 and n 1/2 of nw 1/4	1	132	34
E 1/2 of sw 1/4	1	132	34
Sw 1/4 of sw 1/4	1	132	34
N 1/2 of se 1/4	1	132	34
Sw 1/4 of se 1/4	1	132	34
Ne 1/4 of se 1/4	5	132	34
W 1/2 of se 1/4 and se 1/4 of se 1/4	5	132	34
Se 1/4 of ne 1/4	5	132	34
W 1/2 of Ne 1/4	5	132	34
Ne 1/4 of ne 1/4	5	132	34
Ne 1/4 of Sw 1/4	1	133	34
Sw 1/4 of nw 1/4	1	133	34
Nw 1/4 of nw 1/4	1	133	34
N 1/2 of sw 1/4	3	133	34
S 1/2 of sw 1/4 and s 1/2 of se 1/4	3	133	34
Ne 1/4 of se 1/4	3	133	34
Nw 1/4 of se 1/4	3	133	34
S 1/2 of ne 1/4 and s 1/2 of nw 1/4	3	133	34
Ne 1/4 of ne 1/4	3	133	34
Nw 1/4 of ne 1/4 and n 1/2 of nw 1/4	3	133	34
N 1/2 of se 1/4	5	133	34
Sw 1/4	9	133	34
E 1/2 of ne 1/4 and ne 1/4 of se 1/4	9	133	34
S 1/2 of ne 1/4 and se 1/4	11	133	34
N 1/2 of nw 1/4	11	133	34
Se 1/4 of sw 1/4	15	133	34
E 1/2 of se 1/4 and sw 1/4 of se 1/4	15	133	34
Nw 1/4 of se 1/4	15	133	34

N 1/2 of ne 1/4	15	133	34
Sw 1/4 of nw 1/4	15	133	34
S 1/2 of ne 1/4 and se 1/4 of nw 1/4	17	133	34
N 1/2 of nw 1/4 and sw 1/4 of nw 1/4	17	133	34
Ne 1/4 of sw 1/4	17	133	34
S 1/2 of sw 1/4	17	133	34
N 1/2 of se 1/4	17	133	34
S 1/2 of sw 1/4	19	133	34
Se 1/4 of sw 1/4	21	133	34
Sw 1/4 of ne 1/4 and e 1/2 of nw 1/4	29	133	34
Nw 1/4 or nw 1/4	29	133	34
Sw 1/4 of nw 1/4 and n 1/2 of sw 1/4	29	133	34
Sw 1/4 of sw 1/4	29	133	34
Se 1/4 of sw 1/4 and w 1/2 of se 1/4	29	133	34
E 1/2 of se 1/4	29	133	34
N 1/2 of ne 1/4	31	133	34
Sw 1/4 of ne 1/4 and nw 1/4 of se 1/4	31	133	34
Sw 1/4 of ne 1/4	33	133	34
W 1/2 of nw 1/4	33	133	34
Se 1/4 of nw 1/4	35	133	34
Ne 14 of sw 14	35	133	34
Se 1/4 of sw 1/4	35	133	34
N 1/2 of sw 1/4 and sw 1/4 of sw 1/4	9	133	35
Nw 1/4 of ne 1/4	13	133	35
N 1/2 of sw 1/4	13	133	35
S 1/2 of sw 1/4 and s 1/2 of se 1/4	13	133	35
Lots 8 and 9	5	133	40
Lot 10	5	133	40
Lots 2 and 3	13	133	40
Nw 1/4 of ne 1/4, s 1/2 of ne 1/4 and Lot 1	33	136	40
E 1/2 of se 1/4	33	136	40
Lot 5	33	136	40
S 1/2 of nw 1/4	35	136	40
Se 1/4 of ne 1/4	9	136	43
N 1/2 of nw 1/4 and se 1/4 of nw 1/4	9	136	43
Sw 1/4 of nw 1/4	9	136	43
N 1/2 of ne 1/4 and sw 1/4 of ne 1/4	21	136	43

Witness our hands at St. Cloud aforesaid, this 14th day of January, A. D. 1901.

M. D. TAYLOR, Register.
ALVAH EASTMAN, Receiver.

562 EXHIBIT No. 45:—Duly Certified. Offered in evidence at page 225, this record:

S. S. M.

Lists 15, 15 A, 15 B.
Department of the Interior J V W.

WKM.
"F"

General Land Office,
Washington, D. C., May 26, 1900.

Address only the
Commissioner of the General
Land Office.

Register and Receiver,
Duluth, Minnesota.

Sirs: Under the decision of the Department of January 30, 1897, and by letter to you of March 22, 1897, all the selections (Second Indemnity) made by the Northern Pacific Railroad (now Railway) Company per Lists 15 A and 15 B of your office series, were canceled because the lands were outside of the terminal limits of the grant to the company as fixed by the Department at Duluth, excepting certain tracts specified in said letter of cancellation, which were within the limits of the grant as thus established, and you were directed to note such cancellation on your records.

The U. S. Supreme Court, however, in the case of Andrew Doherty v. North. Pacific Ry. Co., and U. S. vs. said company handed down its decisions on April 16, 1900, wherein it is held that the terminus of the grant to the company is at Ashland, Wisconsin.

The cancellation, therefore, of the company's selections above referred to was erroneous and is hereby rescinded, and the selections restored to the records, which fact you will please note on your records.

The selections will now be duly considered upon their legality otherwise, and in connection with any conflicting claims or rights.

Very respectfully,
W. A. RICHARDS,
Asst. Commissioner.

563 B W M.

List 16, Second Indemnity. S S M.
List 20 in Place.

W K. M. G. F. P.

Department of the Interior,

JVW.

"F" General Land Office,
Washington, D. C., July 12, 1900.

Address only the
Commissioner of the General Land Office.

Register and Receiver,
Duluth, Minnesota.

Sirs: Under the decision of the Department of October 29, 1896 (23 L. D., 428) and by letter to you of April 17, 1897, all the selections (second indemnity) made by the Northern Pacific Railroad (now Railway) Company per list 16 of your office series, were canceled because the lands were outside of the terminal limits of the grant to the company as fixed by the Department at Duluth, excepting certain tracts specified in said letter of cancellation, which were within the limits of the grant as thus established and you were directed to note such cancellation on your records.

By same letter and for the same reasons List No. 20 of lands "in place" was also canceled.

The U. S. Supreme Court, however, in Andrew Doherty v. Northern Pacific R. R. Co., and U. S. v. said company, handed down its decisions on April 16, 1900, wherein it is held that the terminus of the grant to the company is at Ashland, Wisconsin.

The cancellation, therefore, of the company's selections and listing above referred to was erroneous and is hereby rescined and the selections restored to the records, which fact you will please note on your records.

The selections and listing will now be duly consid-
564 ered, upon their legality otherwise, and in connection
with any conflicting claims or rights.

Very respectfully,
W. A. RICHARDS,
Asst. Commissioner.

B W M.

EXHIBIT No. 46:—Duly Certified. Offered in evidence at page 226, this Record.

Z. B. S. Ld. G. & R. Rds.

Department of the Interior.
Washington, D. C., 20 November, 1871.

Sir: I transmit herewith for appropriate action, a duly certified map (received on the 18th inst. from the Hon. Benj. F. Wade, Agt. & Atty. with his letter of that date) of the completed portion of the Northern Pacific Railroad (Minn. Division—228.2 miles) from a junction with the Lake Superior & Miss. road, at Junction, Minn., to the Red River of the North.

Very respectfully,
Your Ob't servant,
C. DELANO, Secretary.

Hon. Willis Drummond,
Comr. G. L. O.

EXHIBIT No. 47:—Duly Certified. Offered in evidence at page 226, this Record.

Compared
R. J. F. M.
A. P. R.

Northern Pacific Railroad Co.
565 Secretary's Office, 35 Wall Street,
New York, October 23d, 1882.

I, Samuel Wilkeson, the secretary of the Northern Pacific Railroad Company, certify that Charles B. Lamborn, was duly elected Land Commissioner of the said company on the 20th day of April, 1882, by the company's Board of Directors, and that as such, and as incident to his office, he is fully authorized to select lands, both lands in place and indemnity lands, enuring to this company in the states of Wisconsin, Minnesota, and Oregon, and in the Territories of Dakota, Montana, Idaho, and Washington, under and by virtue of the grants of lands made by Congress to aid the construction of the Company's road.

And to this certificate for greater verification I attach the corporate seal of the Company.

SAM'L WILKINSON, Secretary.

Seal of the Northern
Pacific Railroad
Company.
Chartered 1864 By
Congress.

Indorsed: Certificate of Authority from Samuel Wilkeson to Charles B. Lamborn. Filed November 7th, 1882. J. H. Moe, Register. 1882—89250—1 Enc.

566 EXHIBIT No. 48: Duly certified. Offered in evidence at page 226, this Record:

Department of the Interior,
Washington, D. C., Oct. 12th, 1866.

Sir: I enclose, herewith, for your information and report, a letter dated 18th ultimo from the Governor of Minnesota with the map of the Lake Superior and Mississippi Railroad, authorized to be constructed by the Act of Congress approved May 5, 1864, and the amendatory Act thereof approved July 13th 1866; and certified copy of the Act of the Legislature of said State, referred to therein.

It appears from the records of this Department, that, in compliance with the recommendation contained in your letter of 6th July last, my predecessor, on the 7th of the same month, extended the time in which said Company were required to file a map of the definite location of their road, to the 11th October instant.

The map referred to and enclosed herewith, was received at this Department on the 25th ultimo.

The letter with map and certified copy of the Act of the Legislature, you are requested to return with your report thereon. I am, sir,

Very respectfully,
Your Obt. Servant,
(Signed) O. H. BROWNING, Secretary.

Hon. Jos. S. Wilson,
Com'r. Gen. Land Office.

567 Department of the Interior,
General Land Office
Nov. 2, 1866.

Register and Receiver,
Duluth, Minn.

Gentlemen: Herewith is a diagram showing the line of route, as definitely located, of the Lake Superior and Mississippi Railroad, with the ten, twenty and on the west side the thirty mile limits indicated thereon, Acts May 5, 1864 & July 13, 1866.

The odd sections within all three of these limits will be withdrawn from sale or location, pre-emption or homestead; except in so far as valid pre-emption claims may have accrued to the same, prior to the withdrawal of May 26, 1864, within the limits therein designated, and prior to the receipt of this order outside of the limits fixed in that withdrawel.

As the Act 1864 reserves from the grant any and all lands theretofore reserved for the purpose of aiding in any object of internal improvements or for any other purpose whatsoever, no reserved lands are subject to the operation of the grant.

You will mark the line of route with the several limits on the township plats in pencil, and you will report the fact of its having been done.

The Railroad Company will be required, first, to make their selections from the 10 and 20 mile limits,—if it is then found that a deficiency exists, the same can be made up by selections from the 30 mile limit.

This order will take effect from the date of its receipt at your office, & you will advise me of the precise time it may be received by you.

568 Very respectfully, Your Obdt. servant,
(Signed) JOS. S. WILSON, Commissioner.

The even section within the 10 mile limits are increased in price [fo] $2.50 per acre and will be subject at that rate, to settlement & entry under the pre-emption & Homestead laws; but no such selections can be entered at private sale until they shall have first been offered at public auction.

JOS. S. WILSON, Commissioner.

Department of the Interior,
General Land Office,
November 2d, 1866.

Register & Receiver
Taylors Falls, Minn.

Gentlemen: Herewith is a diagram showing the lines of route as definitely located, of the Lake Superior and Mississippi Railroad, with the ten, twenty, and on the west side, the thirty mile limits indicated thereon, Acts of May 5th 1864 & July 13th 1866.

The odd sections within all three of these limits will be withdrawn from sale or location, pre-emption,or homestead, except in so far as valid pre-emption claims may have attached to the same, prior to, and within the limits of the withdrawel of May 26th 1864 and prior to the receipt of this order, outside of the limits fixed in that withdrawel.

The even sections within the ten mile limits are increased in price to $2.50 per acre, & will be subject at that rate to settlement and entry under the Pre-emption, and Homestead laws; and no such sections can be entered at private sale
569 until they shall have first been offered at public sale.

As the Act of 1864 reserves from the grant any and all lands theretofore reserved for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, no land south of the north fifteen miles limit of the grant to the St. Paul & Pacific Railroad is included therein; but the even sections within the same (the 10 mile limits) that are south of the fifteen mile limits of the St. Paul & Pacific Railroad, and north of the termini at St. Paul are increased to $2.50 per acre.

You will mark the line of route with the several limits, on the Township plats in pencil and will report the fact of its having been done.

The Railroad Company will be required first, to make their selections from the ten and twenty mile limits, if it is then found that a deficiency exists, the same can be made up by selections from the thirty mile limits.

This order will take effect from date of its receipt at your office, and you will advise me of the precise time it may be received by you.

Very respectfully,
Yours Obt. Svt.
JOS. S. WILSON, Commissioner.

EXHIBIT No. 49: Duly certified. Offered in evidence at page 226, this Record:

570 1899—31298 S. S. M.
W. O. C.
W. K. M. J. V. W.

Department of the Interior,
F. General Land Office.
Washington, D. C., May 3, 1900.

Address only the
Commissioner of the General Land Office.

The Honorable,
The Secretary of the Interior.

Sir: Referring to my report of March 4, 1899, and departmental instructions thereon of March 11, 1899, respecting the assignment of losses by the Northern Pacific Railroad Company as basis for the indemnity lands awarded to the company under the decree entered in accordance with the decision of the Supreme Court in the case of St. Paul and Pacific Railroad Company vs. Northern Pacific Railroad Company (139 U. S., 1), I have the honor to report that, under date of March 22, 1899, I called on the Northern Pacific Railroad Company through its resident Counsel, Messrs. Britton and Gray to

First, Assign and supply proper basis for all the lands within the first and second indemnity belts in Minnesota, awarded it by the Supreme Court decision aforesaid, or to show cause to the contrary.

Second. Show cause why the land department should not refuse to recognize, approve or patent any further selections of indemnity lands by said company within said second indemnity belt within the State of Minnesota.

Third. Show cause why said company should not be required to relinquish and reconvey unto the United States the lands, if any, which have been approved and patented to it within said second indemnity belt within the State of Minnesota, in excess of the lands, which said Company was authorized to select therein.

571 Under date of March 29, 1899, counsel for the company requested to be advised of the particular lands referred to requiring proper designation of losses—47051.23 acres first indemnity and 4203.23 acres second indemnity.

To this, this office responded April 12, 1899, with a list of the lands for which no valid basis had been furnished.

April 25, 1899, the company, through its counsel, submitted a list of second indemnity losses aggregating 4029.52 acres as part basis for the 4203.23 acres of second indemnity lands; but, it may be stated here, that under date of March 19, 1900, I rejected said losses as invalid, so that no part of the basis for said 4203.23 acres has been supplied.

Under date of May 4, 1899, counsel, in answer to the second and third propositions, as above set forth, filed a list comprising 356,241.28 acres of land west of Thomson Junction, which they claim the company is entitled to designate as basis for second indemnity selections in Minnesota, and which they believe is sufficient answer thereto, because it is largely in excess of the 294,277.58 acres found by this office in its report to your department of March 4, 1899, as within the provisions of the grant applicable to the second indemnity right.

They claim as still to the credit of the company out of the lands in the list submitted 61,963.10 acres.

In respect to the designation of losses to support the 47,051.25 acres of the first indemnity lands awarded by the court, it is suggested by them that the losses already assigned should be sufficient for present purposes; that the selections have not been patented to the company and that the only way in which the question can become of interest is in event of this office charging said lands against the company upon the final adjustment of its grant; that such adjustment is not a
572 matter of next year and long before that time the question of the eastern terminal of the road will have been finally settled, and they submit that the question of adjusting losses should be postponed until decision in said eastern terminal suit.

They conclude, that should this office decide that notwithstanding the above, the company should designate the losses in support of the 47,051.25 acres of first indemnity, ninety days additional time should be allowed, as it would require a rearrangement of a number of lists and considerable figuring to reach a satisfactory re-adjustment.

Their letter is herewith submitted.

I have caused an examination of the list filed by them to be made with the records of this office and submit statement as the result thereof, by which it is shown that the company has embraced a large quantity of lands, which, in the judgment of this office, is not available as basis for second indemnity selection.

The statement also embraces lands which appear to be available, but which the company failed to include in their list.

As the result of this examination, it is shown that the total available basis west of Thomson Junction is 290,380.01 acres; that there have been patented to the company or confirmed to it by the court, and for which basis has been furnished 290,881.63 acres, which basis includes 1,261.96 acres east of the Junction and 916.66 acres east of the terminal at Duluth, leaving the quantity of basis from losses west of the Junction 288,703.01 acres, and leaving a credit to the company on the losses west of the junction of 1677 acres.

But, of the total lands confirmed by the court, there are the 4,203.23 acres for which no valid bases have yet been furnished; crediting this with said 1,677 acres there still remains a deficiency of 2,526.23 acres for which no lands appear
573 available west of the Junction.

I find, however, that between the eastern terminal, as now established at Duluth, and the Junction, 4,706.21 acres, which would be good bases for second indemnity selections; this is chargeable, however, as shown in the statement, with the deficiency of 2,526.23 acres and the quantity thereof used in the approved lists 1,261.96 acres making a total of 3,788.19 acres, thus leaving to the credit of the company 918.02 acres.

The U. S. Supreme Court, however, has now decided that the company's grant extends to Ashland and I find there are 28,431.84 acres east of Duluth in Minnesota of the class available for second indemnity selections, of which 755.20 acres have been used for first indemnity approved selections and 916.66 acres for second indemnity approved selections leaving 25,759.98 acres to the credit of the company between the Junction and Duluth, making a total credit of 21,678 acres.

There are suspended selections of, or applications to select, second indemnity lands in excess of this amount, and since under the statement above made, the bases therefor are not available, the said 27,678, acres must now be relied on for good bases.

You request that this office shall accompany this report with recommendations thereon.

I would therefore suggest and recommend that the company should be requested to at once designate the selections it will retain in satisfaction of the said 27,678, acres, and that thereupon the remaining pending second indemnity selections or applications to select, be rejected and canceled, and that, should the company fail to make adjustment, within the time which may be accorded to them, this office may then proceed to make said adjustment and thereafter to cancel all
574 second indemnity selections or applications to select, in excess thereof.

With respect to the bases for balance of confirmed first indemnity land, as set out in office report of March 4, 1899, it is only necessary now to say that in view of the decision of the court, the bases already designated would appear to be good and sufficient, so that no further action on the part of the company appears necessary. Attached is a schedule of the papers submitted. Further report will be made as to first indemnity. Very respectfully,

BINGER HERMANN, Commmissioner.

MEG.

Schedule of Papers.

Company's list of lands west of Thomson Junction claimed as good for second indemnity bases.

A. Supplemental statement of lands found to be good bases by this office.

B. Statement of lands claimed by the company as good bases but which, in the judgment of this office, are not so.

C. Statement of lands west of Thomson Junction not included in Company's list, but which are found by this office to be good bases.

D. Statement of lands between Thomson Junction and Duluth, which this office finds to be good bases.

E. Statement of lands east of Duluth, which this office finds to be good bases.

F. Condensed Statement of result of examination.

G. Letter of Britton & Gray of May 4, 1899.

575 EXHIBIT No. 50: Offered in evidence at page 227, this Record:

Deed No. 2750E (A)

Minnesota Division.

Northern Pacific Railway Company.

This Deed, made the nineteenth day of January in the year of our Lord one thousand nine hundred, by the Northern Pacific Railway Company, a corporation duly incorporated under the laws of the State of Wisconsin, party of the first part, and

Frederick Weyerhaeuser and John A. Humbird

of St. Paul in the County of Ramsey and State of Minnesota parties of the second part, witnesseth:

That in consideration of the sum of forty thousand dollars, ($40,000.00) unto it paid, the receipt of which is hereby acknowledged does grant, bargain and convey unto the said parties of the second part, their heirs and assigns, the following described tracts of land, situate in the County of Lake in the State of Minnesota, that is to say:

In Township fifty-four (54) North, of Range nine (9) West of the Fourth Principal Meridian, the southwest quarter of the northeast quarter, the east half of the southwest quarter and Lot four (4) of Section nineteen (19).

In township fifty-four (54) North, of Range nine (9) West of the Fourth Principal Meridian, the south half of the northwest quarter and Lots 2 (2), three (3) and four (4) of Section twenty-seven (27).

In Township fifty-four (54) North, of Range nine (9) West of the Fourth Principal Meridian, the southeast quarter of the northwest quarter and the northeast quarter of the southwest quarter of Section Thirty-one (31).

576 In Township fifty-four (54) North, of Range nine (9) West of the Fourth Principal Meridian, Lot three (3) of Section thirty-three (33).

In township fifty-three (53) Nortn, of Range ten (10) West of the Fourth Principal Meridian, the north half, the southwest quarter, the north half of the southeast quarter and the southwest quarter of the southeast quarter of Section three (3).

In township fifty-four (54) North, of Range ten (10) West of the Fourth Principal Meridian, the southwest quarter of the Northeast quarter of Section three (3).

In township fifty-five (55) North, of range ten (10) West of the Fourth Principal Meridian, the southeast quarter of the northwest quarter of Section thirty-three (33).

In township fifty-three (53) North, of range eleven (11) West of the Fourth Principal Meridian, the southwest quarter of the northeast quarter of Section three (3).

In township fifty-three (53) North, of Range eleven (11) West of the Fourth Principal Meridian, the fractional northwest quarter of Section five (5).

In township fifty-three (53) North, of Range eleven (11) West of the Fourth Principal Meridian, the southwest quarter of the southwest quarter of Section seven (7).

In township fifty-three (53) North, of range eleven (11) West of the Fourth Principal Meridian, the southwest quarter of the southwest quarter of Section nine (9).

In township fifty-three (53) North, of range eleven (11) West of the Fourth Principal Meridian, the east half and the southeast quarter of the northwest quarter of Section seventeen (17).

577 In township fifty-three (53) North, of range eleven (11) West of the Fourth Principal Meridian, the northwest quarter of the northeast quarter and the northeast quarter of the northwest quarter of Section nineteen (19).

In township fifty-three (53) North, of range eleven (11) West of the Fourth Principal Meridian, the southwest quarter of the northwest quarter of section twenty-one (21).

In township fifty-three (53) North, of range eleven (11) West of the Fourth Principal Meridian, the northwest quarter of the northwest quarter of Section thirty-one (31).

In township fifty-five (55) North, of range eleven (11) West of the Fourth Principal Meridian, the south half of the southwest quarter of Section seven (7).

In township fifty-five (55) North, of range eleven (11) West of the Fourth Principal Meridian, the southeast quarter of the Northwest quarter of Section twenty-three (23).

In township fifty-five (55) North, of range eleven (11) West of the Fourth Principal Meridian, the northeast quarter of the southwest quarter, the south half of the southwest quarter and the southeast quarter of Section twenty-seven (27).

In township fifty-five (55) North, of range eleven (11) West of the Fourth Principal Meridian, the west half of the northeast quarter, the east half of the northwest quarter and the south half of Section twenty-nine (29).

In township fifty-five (55), North of range eleven, (11) West of the Fourth Principal Meridian, all of Section thirty-one (31).

In township fifty-five (55) North, of range eleven (11) West of the Fourth Principal Meridian, the west half of the northwest quarter of Section thirty-three (33).

In Township fifty-five (55) North, of range eleven (11) West of the Fourth Principal Meridian, the east half of the southwest quarter of Section thirty-five (35).

578 All the above described tracts of land containing according to the United States Government Survey thirty-six hundred fifteen and eighty one-hundredths (3615.80) acres, more or less.

Together with the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

To have and to hold the said lands and appurtenances unto the said parties of the second part, their heirs and assigns, forever, free and clear of all liens, charges and encumbrances, except taxes and assessments, if any, levied, or assessed since the first day of January A. D. 1900.

The said party of the first part, for itself and its successors, covenants and agrees to and with the said parties of the second part, their heirs and assigns, that it is lawfully seized of all and singular the above granted and described premises and has good right and lawful authority to grant, bargain, sell and convey the same in the manner aforesaid; and that the said parties of the second part, their heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, possess and enjoy the above described granted premises, and that the same are free from encumbrances, except taxes and assessments, if any, levied or assess- since the first day of January A. D. 1900.

In witness whereof, the said party of the first part has caused these presents to be sealed with its corporate seal and signed by its president, the day and year first above written.

NORTHERN PACIFIC RAILWAY COMPANY,
By C. S. Mellen, President.
[Corporate Seal] Attest: W. H. Gemmell,
Assistant Secretary.

Sealed and delivered in the presence of
P. W. Corbett,
Harry A. Fabian.
[$40.00 revenue stamps canceled, Jan. 20th, 1900.]

579 State of Minnesota,
County of Ramsey—ss.

On this twenty-sixth day of January in the year 1900, before me P. W. Corbett, a notary public, personally appeared C. S. Mellen, to me known to be the President of the Northern Pacific Railway Company, the corporation which executed the foregoing instrument, and who being sworn did say, that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said C. S. Mellen, acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office, in the City of St. Paul, the day and year last aforesaid.

[Notarial Seal] P. W. CORBETT,
Notary Public, Ramsey County, Minnesota.

Compared with original by Thos. H. Pressnell, Examiner.

EXHIBIT No. 51:—Offered in evidence at page227, this record:

(B)

Deed No. 2751E.

Minnesota Division.
Northern Pacific Railway Company.

This Deed, made the 19th day of January in the year of our Lord One Thousand Nine Hundred, by the Northern Pacific Railway Company, a corporation duly incorporated under the laws of the State of Wisconsin, party of the first part, and Frederick Weyerhaeuser and John A. Humbird, of the City of Saint Paul, in the County of Ramsey and State of Minnesota, parties of the second part, Witnesseth:

That in consideration of the sum of One Hundred and
580 Seventy-three Thousand, Forty-four and Seventy one-hundredths (173,044.70) Dollars, unto it paid, the receipt of which is hereby acknowledged, does grant, bargain, and convey unto the said parties of the second part, their heirs and assigns, the following described tracts of land, situate in the County of Saint Louis, in the State of Minnesota, that is to say:

The north half, the south half of the southwest quarter, and the southeast quarter of section three (3): the northeast quarter of the northeast quarter, the south half of the northeast quarter, the southwest quarter of the northwest quarter, and the north half of the southeast quarter of section five (5): the southwest quarter of the northeast quarter, the east half of the northwest quarter, the northeast quarter of the southwest quarter, the south half of the southwest quarter, the northwest quarter of the southeast quarter, and the south half of the southeast quarter of section seven (7): the southeast quarter, and the south half of the southwest quarter of section nine (9): the northwest quarter and the south half of section fifteen (15): the north half, the north half of the southeast quarter, and the southwest quarter of the southeast quarter of section seventeen (17): all in Township fifty-two (52) North, Range Twelve (12) West of the Fourth Principal Meridian:

Lots one (1), two (2), three (3), the southeast quarter of the northeast quarter, the west half of the northwest quarter, the northeast quarter of the southwest quarter, and the west half of the southeast quarter of section one (1); the northwest quarter of the northeast quarter, the east half of the northwest quarter, the northwest quarter of the northwest quarter, the southeast quarter of the southwest quarter and the southeast quarter of section three (3): the south half of the north-

east quarter, the northwest quarter, and the southeast quarter
of section five (5): the south half of the northeast quar-
581 ter, the north half of the southwest quarter, the south-
east quarter of the southwest quarter, the north half of the southeast quarter, and the southwest quarter of the southeast quarter of section seven (7): the east half of the northeast quarter, the west half of the northwest quarter, the northwest quarter of the southwest quarter, and the northwest quarter of the southeast quarter of section eleven (11): the east half of the northeast quarter, the southwest quarter of the northeast quarter and the southeast quarter of section thirteen (13): the southeast quarter of the southwest quarter and the southeast quarter of section seventeen (17): the northwest quarter of the northeast quarter of section twenty-one (21): the east half of the northeast quarter, the northwest quarter of the northeast quarter and the southeast quarter of the southwest quarter of section twenty-three (23): the southeast quarter of the southwest quarter, the east half of the southeast quarter and the southwest quarter of the southeast quarter of section twenty-five (25): the northwest quarter of the southeast quarter of section twenty-five (25): the northwest quarter of the northwest quarter and the southeast quarter of the southwest quarter of Section twenty-seven (27): the northeast quarter of the southwest quarter of section twenty-nine (29): the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter, the southwest quarter, the northwest quarter of the southeast quarter, and the south half of the southeast quarter of section thirty-one (31): the west half of the northeast quarter, the east half of the northwest quarter, the northwest quarter of the southwest quarter, the south half of the southwest quarter and the southeast quarter of section thirty-three (33): the southeast quarter of the northeast quarter and the southeast quarter of section thirty-five (35): all in Township fifty-three (53) North, Range Twelve (12) West of the Fourth Principal Meridian:

582 All of section one (1): lots two (2), three (3), four (4), five (5), seven (7), and the southwest quarter of the northwest quarter of section three (3): lots five (5), seven (7), eight (8), nine (9), the southwest quarter of the northwest quarter, and the northeeast quarter of the southwest quarter of section five (5): lots three (3), four (4), eight (8), and the northeast quarter of the southwest quarter of section seven (7): the northwest quarter of the northeast quarter and the northwest quarter of section nine (9): the north half of the northeast quarter of section eleven (11): all of section thirteen (13): Lots one (1), two (2), three (3), four (4), five (5), six (6), the northwest quarter, the northeast quarter of the south-

west quarter, the south half of the southwest quarter, and the north half of the southeast quarter of section fifteen (15): lot two (2), the east half of the southwest quarter and the southeast quarter of section seventeen (17): Lots two (2), five (5), the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, and the southeast quarter of the southwest quarter, of section nineteen (19): the east half of the northeast quarter, the southwest quarter of the northeast quarter and the south half of section twenty-one (21): the east half, the east half of the west half, the northwest quarter of the northwest quarter and the southwest quarter of the southwest quarter of section twenty-three (23): all of section twenty-five (25): the east half, the south half of the southwest quarter of section twenty-seven (27): the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northwest quarter, and the northwest quarter of the southwest quarter of section twenty-nine (29): lot one (1), and the northeast quarter of the northwest quarter of section thirty-one (31): the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter, the north half of the southwest quarter, the southeast
583 quarter of the southwest quarter, and the southeast quarter of section thirty-three (33): the northeast quarter, the northeast quarter of the northwest quarter, the south half of the northwest quarter, the north half of the south half, and the southwest quarter of the southeast quarter, of section thirty-five (35): all in Township Fifty-four (54) North, Range Twelve (12) West of the Fourth Principal Meridian:

The north half of the northeast quarter, and the northwest quarter of section seven (7): the northwest quarter of the northeast quarter, the south half of the northeast quarter, the northwest quarter of the northwest quarter, the northeast quarter of the southwest quarter, the south half of the southwest quarter, and the southeast quarter of section thirteen (13): the west half of the northeast quarter, the east half of the northwest quarter, the northwest quarter of the northwest quarter, the northeast quarter of the southwest quarter, the south half of the southwest quarter, the north half of the southeast quarter, and the southeast quarter of the southeast quarter of section twenty-one (21): Lot one (1), the north half, the east half of the southwest quarter, and the southeast quarter of section twenty-three (23): Lots one (1), two (2), six (6), eight (8), the north half of the northwest quarter, and the northwest quarter of the southwest quarter of section twenty-seven (27): lots one (1), two (2), the northeast quarter, the northeast quarter of the northwest quarter, the south half of the northwest quarter, and the northwest quarter of the southeast quarter of section twenty-nine (29): Lot five (5), the north half of the northeast quarter, the east half of the southwest quarter, the northwest quarter of the southeast quarter, and the south half of the southeast quarter, of section thirty-one (31): lots one (1), two (2), three (3), four (4), five (5), the northwest quarter of the northeast quarter, the south half of the northeast quarter, the east half of the northwest quarter, the southwest quarter of the northwest 584 quarter, and the southeast quarter of section thirty-three (33): lot one (1), the northwest quarter, the north half of the southwest quarter, and the southeast quarter of section thirty-five (35): all in township fifty-five (55) North, Range Twelve (12) West of the Fourth Principal Meridian:

The northeast quarter of the northeast quarter, and the northwest quarter of the northwest quarter of section one (1): the northeast quarter of the northwest quarter, and the west half of the southwest quarter of section three (3): the northwest quarter of the northwest quarter of section five (5): the northeast quarter, the east half of the northwest quarter, the southwest quarter of the northwest quarter, the north half of the south half and the southeast quarter of the southeast quarter of section seven (7): the northeast quarter of the northeast quarter, the south half of the northeast quarter, the north half of the southeast quarter, and the southeast quarter of the southeast quarter of section nine (9): the northeast quarter of the southwest quarter, the south half of the southwest quarter, and the south half of the southeast quarter of section eleven (11): the northeast quarter, the northeast quarter of the southeast quarter, and the south half of the southeast quarter of section thirteen (13): the northeast quarter, and the south half of the northwest quarter of section fifteen (15): all in Township Fifty-two (52) North, Range Thirteen (13) West of the Fourth Principal Meridian:

The north half of the northeast quarter, the southeast quarter of the northeast quarter, the northwest quarter of the northwest quarter, the south half of the northwest quarter, the northeast quarter of the southwest quarter, and the northwest quarter of the southeast quarter of section one (1): lot four (4) of section three (3): the northeast quarter of the southwest quarter of section five (5): Lots two (2), four (4), five (5), six (6), seven (7), the south half of the northwest quarter, 585 the northeast quarter of the southwest quarter, and the southeast quarter of the southeast quarter of section seven (7): lot two (2) of section nine (9): the south half of the northeast quarter, the east half of the southwest quarter, and the northwest quarter of the southeast quarter of section eleven (11): the southeast quarter of the southeast quarter of section thirteen (13): the southwest quarter of the northeast quarter, the northwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter of section twenty-five (25): all in Township Fifty-three (53) North, Range Thirteen (13) West of the Fourth Principal Meridian.

The southeast quarter of the northwest quarter, and the northeast quarter of the southwest quarter, of section one (1): the south half of the southwest quarter of section three (3): the southeast quarter of the northeast quarter of section five (5): the south half of the northwest quarter, the northwest quarter of the southwest quarter, and the west half of the southeast quarter of section nine (9): the southeast quarter of the southwest quarter of section thirteen (13): the northwest quarter of the northeast quarter of section fifteen (15): lots one (1), four (4), and the southeast quarter of the northwest quarter of section nineteen (19): lots three (3) and seven (7) of section twenty-one (21), the southwest quarter of the northeast quarter of section twenty-three (23): lots four (4), seven (7), and the south half of the northeast quarter of section twenty-five (25): the southwest quarter of the northwest quarter, and the west half of the southwest quarter of section twenty-seven (27): lots one (1), two (2), five (5), seven (7), the southeast quarter of the northeast quarter, the southeast quarter of the southwest quarter, and the southwest quarter of the southeast quarter of section twenty-nine (29): lots seven (7), and the southwest quarter of the northeast quarter of section thirty-one (31): the north half of the northeast quarter, the southeast quarter of the northeast quarter,
586 the southeast quarter of the southwest quarter, and the
southwest quarter of the southeast quarter of section thirty-five (35): all in Township Fifty-four (54) North, Range Thirteen (13) West of the Fourth Principal Meridian:

The northwest quarter of the southwest quarter, the southeast quarter of the southwest quarter, and the north half of the southeast quarter of section one (1): the southwest quarter of the northwest quarter of section five (5): the southeast quarter of the southwest quarter of section seven (7): the south half of the northeast quarter, the north half of the northwest quarter, the east half of the southwest quarter, and the northwest quarter of the southeast quarter of section nine (9): Lot three (3) of section thirty-one (31): all in Township Fifty-five (55) North, Range Thirteen (13) West of the Fourth Principal Meridian:

The northeast quarter of the northwest quarter of section one, (1): lot one (1), and northwest quarter of the northeast quarter of section three (3): the east half of the northeast quarter, the north half of the southwest quarter, and the southwest quarter of the southwest quarter of section five (5): the north half of the northeast quarter, and the east half of the southeast quarter of section seven (7): lot one (1), the northwest quarter of the northwest quarter, and the northwest quarter of the southwest quarter of section nine (9): the northwest quarter of the northeast quarter, and the northeast quarter of the northwest quarter of section thirteen (13: the northwest quarter of the northeast quarter, and the south half of the northeast quarter of section fifteen (15): lot five (5), and the northwest quarter of section seventeen (17): all in Township Fifty-two (52) North, Range Fourteen (14) West of the Fourth Principal Meridian:

The east half of the northeast quarter, and the southwest quarter of the northwest quarter of section fifteen (15):
587 the southwest quarter of the northeast quarter of section nineteen (19): the northwest quarter of the southwest quarter of section twenty-one (21): the northwest quarter of the northeast quarter, the east half of the northwest quarter, and the north half of the southwest quarter of section twenty-nine (29): island number one (1), and lots five (5), six (6) and Seven (7) of section thirty-three (33): all in Township Fifty-three (53) North, Range Fourteen (14) West of the Fourth Principal Meridian:

The southwest quarter of the northeast quarter, and the southwest quarter of the southeast quarter of section seven (7): the southeast quarter of the northeast quarter of section nine (9): the southeast quarter of the southwest quarter of section thirteen (13): the southwest quarter of the northeast quarter of section seventeen (17): lots one (1), two (2), the northwest quarter of the northeast quarter, and the northeast quarter of the southeast quarter of section nineteen (19): the southeast quarter of the southeast quarter of section twenty-one (21): the southeast quarter of the northwest quarter of section twenty-three (23): the southwest quarter of the southwest quarter of section twenty-seven (27): the northwest quarter of the northeast quarter, the northwest quarter of the southeast quarter, and the south half of the southeast quarter of section thirty-one (31): the northwest quarter of the southeast quarter, and the south half of the southeast quarter of section thirty-three (33): all in Township Fifty-four (54) North, Range Fourteen (14) West of the Fourth Principal Meridian.

Lots one (1), four (4), the northeast quarter of the southeast quarter of section one (1): the south half of the northeast

quarter, the east half of the southwest quarter, and the northwest quarter of the southeast quarter of section five (5): lot two (2), and the southwest quarter of the northeast quarter
of section seven (7): the southwest quarter of the north-
588 east quarter of section nine (9): all in Township fifty-
five (55) North, Range Fourteen (14) West of the Fourth
Principal Meridian.

Lots one (1), and three (3) of section one (1): the southwest quarter of the northwest quarter, and the southeast quarter of the southeast quarter of section three (3): lots six (6), and seven (7) of section eleven (11): the west half of the northeast quarter, and the southeast quarter of section thriteen (13): the southeast quarter of the northeast quarter, the southeast quarter of the northwest quarter, and the southwest quarter of the southwest quarter of section twenty-three (23): all in Township Fifty-two (52) North, Range Fifteen (15) West of the Fourth Principal Meridian:

The north half of the northeast quarter, the southwest quarter of the northeast quarter, the east half of the northwest quarter, and the north half of the southwest quarter of section one (1): the south half of the northeast quarter, and the north half of the southeast quarter of section three (3): the southeast quarter of the northeast quarter of section five (5): the northwest quarter of the northeast quarter, the south half of the northeast quarter, the northwest quarter, the north half of the southwest quarter, the southeast quarter of the southwest quarter, and the southeast quarter, of section seven (7): the southeast quarter of the northeast quarter, the northeast quarter of the northwest quarter, the southeast quarter of the southwest quarter, and the north half of the southeast quarter of section eleven (11): lot one (1) of section thirteen (13): the northeast quarter of the northeast quarter of section fifteen (15): the south half of the southwest quarter, the north half of the southeast quarter, and the southwest quarter of the southeast quarter of section seventeen (17): the northeast quarter of the northeast quarter of section nineteen (19): the north half of the northeast quarter,
the southwest quarter of the northeast quarter of sec-
589 tion fifteen (15): the south half of the southwest
quarter, the north half of the southeast quarter, and the
southwest quarter of the southeast quarter of section seventeen (17): the northeast quarter of the northeast quarter of section nineteen (19): the north half of the northeast quarter, the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter, the north half of the southwest quarter, the northwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter

of section twenty-one (21): the southeast quarter of the northeast quarter of section twenty-three (23): all in Township Fifty-three (53) North, Range Fifteen (15) West of the Fourth Principal Meridian:

The northwest quarter of the northwest quarter, the south half of the northwest quarter, and the southwest quarter of section fifteen (15): the north half of the northeast quarter, the northwest quarter of the northwest quarter, and the south half of the southeast quarter of section seventeen (17): lots three (3), five (5), eight (8), the north half of the northeast quarter, the northeast quarter of the southwest quarter, and the northwest quarter of the southeast quarter of section nineteen (19): lots one (1), three (3), four (4), five (5), the north half of the northeast quarter, the southwest quarter of the northeast quarter, the northeast quarter of the southwest quarter, the south half of the southwest quarter, and the northwest quarter of the southeast quarter of section twenty-one (21): the southeast quarter of the northeast quarter of section twenty-three (23): the northwest quarter of the southwest quarter of section thirty-five (35): all in Township Fifty-four (54) North, Range Fifteen (15) West of the Fourth Principal Meridian:

The southwest quarter of the southeast quarter of section
three (3): the southeast quarter of the southwest quarter, and
lot four (4) of section seven (7): the southwest quarter
590 of the northwest quarter, and the north half of the
southwest quarter of section nine (9); lots one (1), nine
(9), and ten (10) of section eleven (11): lots one (1), two (2), three (3), the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter, the northeast quarter of the southwest quarter, and the southeast quarter of section nineteen (19): lots two (2), three (3), four (4), six (6), eight (8), the north half of the northeast quarter, the southwest quarter of the northeast quarter, the south half of the northwest quarter, and the north half of the southwest quarter of section twenty-one (21): the north half of the northeast quarter, the south half of the northwest quarter, and the northwest quarter of the southwest quarter of section twenty-three (23): the southwest quarter of the northwest quarter, and the east half of the southwest quarter of section twenty-five (25): lots one (1), two (2), the north half of the northwest quarter, and the southeast quarter of the southeast quarter of section twenty-seven (27): lots one (1), four (4), eight (8), nine (9), the northeast quarter of the northeast quarter, the north half of the northwest quarter, the southwest quarter of the northwest quarter, and the northeast quarter of the southeast quarter of section twenty-nine (29): the southwest quarter of the southeast quarter of section thirty-one (31): the

north half of the southeast quarter of section thirty-five (35): all in Township Fifty-five (55), North, Range Fifteen West of the Fourth Principal Meridian:

Lots one (1), two (2), and the southeast quarter of the southeast quarter of section one (1): in Township Fifty-three (53) North, Range Sixteen (16) west of the Fourth Principal Meridian:

The northeast quarter of the southwest quarter of section three (3): the northeast quarter, the northeast quarter of the northwest quarter, the south half of the northwest quarter, and the north half of the southeast quarter of section eleven (11); lot two (2), the northeast quarter of the
591 northwest quarter of section thirteen, (13): the southwest quarter of the northeast quarter, the southwest quarter of the northwest quarter, the northwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter of section twenty-three (23): the northeast quarter of the northeast quarter of section twenty-five (25): all in Township Fifty-four (54) North, Range Sixteen (16) West of the Fourth Principal Meridian:

The south half of the northeast quarter, the southwest quarter of the northwest quarter, the north half of the south half, and the southeast quarter of the southeast quarter of section Thirteen (13): the south half of the southwest quarter of section fifteen (15): the south half of the south half of section seventeen (17): lots one (1), two (2), the south half of the northeast quarter, the northwest quarter of the northwest quarter, the south half of the northwest quarter, and the north half of the southwest quarter of section twenty-one (21): the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the northwest quarter, the southeast quarter of the southwest quarter, and the south half of the southeast quarter of section twenty-three (23): the northwest quarter of the northeast quarter, and the north half of the northwest quarter of section twenty-five (25): the northeast quarter of the northeast quarter, the west half of the northeast quarter, and the northwest quarter of section twenty-seven (27); lots one (1), two (2), and ten (10), of section twenty-nine (29): lot three (3), and the southeast quarter of the southeast quarter of section thirty-three (33): lot four (4), and the northeast quarter of the southeast quarter of section thirty-five (35): all in Township Fifty-five (55) North, Range Sixteen (16), west of the Fourth Principal Meridian:

All the above described tracts of land containing, according to the United States Government Survey Thirty-one Thousand, Eight Hundred and ninety-one and sixty-five one-
592 hundredths (31,891.65) acres, more or less:

Excepting and reserving therefrom a strip of land for railroad right of way one hundred (100) feet in width, that is fifty (50) feet on each side of the center line of the main track of the Duluth and Iron Range Railroad, as the same is now located and constructed across the following described land, said right of way having been conveyed to said Duluth and Iron Range Railroad Company by deed dated December 30th, 1884, to wit:

The north half of the northwest quarter, the southeast quarter of the northwest quarter, the south half of the northeast quarter, and the northeast quarter of the southeast quarter of Section one (1), in township fifty-four (54) north, Range twelve (12), west of the Fourth Principal Meridian:

The southwest quarter of the northwest quarter, the east half of the southwest quarter, and lot one (1), of section twenty-three (23), in Township fifty-five (55), north, Range twelve, (12) west of the Fourth Principal Meridian:

Together with the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

To have and to hold, the said lands and appurtenances unto the said parties of the second part, their heirs and assigns, forever, free and clear of all liens, charges and incumbrances, except taxes, and assessments, if any levied or assessed since the first [date] of January A. D. 1900.

The said party of the first part, for itself and its successors, covenants and agrees to and with the said parties of the second part, their heirs and assigns, that it is lawfully seized of all and singular, the above granted and described premises, and has good right and lawful authority to grant, bargain,
593 sell and convey the same in the manner aforesaid: and that the said parties of the second part, their heirs and assigns, shall and may at all times hereafter, peaceably and quietly, have, hold, possess and enjoy the above described granted premises, and that the same are free from encumbrances, except taxes and assessments, if any, levied or assessed since the first day of January, A. D. 1900.

In witness whereof, the said party of the first part has caused these presents to be sealed with its corporate seal and signed by its President, the day and year first above written.

NORTHERN PACIFIC RAILWAY COMPANY,
By C. S. Mellen, President.
[Corporate Seal] Attest: W. H. Gemmell,
Assistant Secretary.

Sealed and delivered in presence of
P. W. Corbett,
Harry A. Fabian.

State of Minnesota,
County of Ramsey—ss.

On this 26th day of January, 1900, before me personally appeared C. S. Mellen, to me personally known, who, being by me duly sworn, did say that he is the President of the Northern Pacific Railway Company, the corporation which executed the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said C. S. Mellen, acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office, in the City of St. Paul, the day and year last aforesaid.

[Notarial Seal] P. W. CORBETT,
Notary Public, Ramsey Co., Minn.

594 [$173.50 revenue stamp canceled Jan. 26th, 1900.]

Compared with original by Thos. H. Pressnell, Examiner.

EXHIBIT No. 52:—Duly Certified. Offered in evidence at page 227, this record.

In the Circuit Court of the United States for the Eastern District of Wisconsin.

Farmers' Loan & Trust Company, Complainant,
vs.
Northern Pacific Railroad Company et al., Defendants.

October 30th, 1899.

This cause coming on this day to be heard upon the petition of the Northern Pacific Railway Company, the purchaser of the lands heretofore sold herein, for an assignment to it of certain claims and causes of action arising out of or connected with trespasses committed upon said lands.

It is ordered, that Frank G. Bigelow, and Edwin H. McHenry, the Receivers herein, and the defendant, Northern Pacific Railroad Company make, execute and deliver to said Northern Pacific Railway Company good and sufficient assignments in due form for transferring to and vesting in said railway company all and every claim and demand of every kind whatsoever which said Receivers of said railroad company may at this date have, to demand, collect, sue for or recover against any person or persons for injury, damage or trespass heretofore committed to or upon any lands within the State of Minnesota and within the State of North Dakota east of the Missouri River, granted by the Congress of the United States to aid in the construction and equipment of the railroad of the Northern Pacific Railroad Company, including all rights to recover for conversion of or to
595 compel an accounting for and on account of any timber or property heretofore taken from said lands.

(Signed) JAMES G. JENKINS,
Circuit Judge.

EXHIBIT No. 53:—Offered in evidence at page 228, this record.

Book "U" of Agreements, page 105.
No. 21830. Filed Nov. 15th, 1899, at 10 a. m.
C W B.

This Instrument, Made the 31st day of October, 1899, between Edwin H. McHenry and Frank G. Bigelow as Receivers of the Northern Pacific Railroad Company, a corporation created by an act of Congress of the United States, approved July 2, 1864, and the Northern Pacific Railroad Company, parties of the first part, and the Northern Pacific Railway Company, a corporation created under the laws of the State of Wisconsin, party of the second part, Witnesseth:

Whereas, in a certain suit in equity pending in the Circuit Court of the United States for the Eastern District of Wisconsin in which the Farmers' Loan and Trust Company is complainant and the Northern Pacific Railroad Company and others are defendants, in which suit Edwin H. McHenry and Frank G. Bigelow were appointed receivers of certain lands, assets and property of the Northern Pacific Railroad Company, a certain order was duly entered on the 30th day of October, 1899; by which order the said receivers were ordered and directed to assign to the Northern Pacific Railway Company the rights hereinafter described, and for further assurance the Northern Pacific Railroad Company was directed to join with the said receivers in making such assignment;

596 Therefore, in obedience to the terms of said order and in consideration of the premises and the sum of one dollar to the parties of the first part in hand paid by the party of the second part, the receipt of which is hereby acknowledged, the said Edwin H. McHenry and Frank G. Bigelow as receivers and the said Northern Pacific Railroad Company sell, transfer and assign to the Northern Pacific Railway Company all and every right, claim and demand of every kind whatsoever which the said receivers of the said Railroad Company, or both, may at this date have to demand, collect, sue for or recover against any person or persons, association, corporation or body whatsoever, for injury, damage or trespass heretofore committed to or upon any and all lands within the state of Minnesota and within the state of North Dakota East of the Missouri River granted by the Congress of the United States to aid in the construction and equipment of the railroad of the Northern Pacific Railroad Company, for which letters patent have issued to said Railroad Company or to which said company has a right to receive patents hereafter, whether the same be lands in place or selected or indemnity lands; including also all rights to recover for conversion or to compel an accounting for or on account of any timber or property heretofore taken from said lands; the lands and rights to land hereby intended being the same lands and rights to land and all thereof which were heretofore sold under the decrees in the case above referred to and the ancillary suits pending in the Circuit Court of the United States for Minnesota and the Circuit Court of the United States for North Dakota, and which lands and rights to land were heretofore conveyed to the Northern Pacific Railway Company by the deeds of Alfred L. Cary, Special Master, and Edwin H. McHenry and Frank G. Bigelow, receivers, bearing date the 22nd day of September, 1899.

In testimony whereof the said Edwin H. McHenry and Frank G. Bigelow have hereunto set their hands and seals
597 and the Northern Pacific Railroad Company has executed this instrument under its corporate seal and under the hands of its president and secretary the day and year above written.

EDWIN H. McHENRY. [Seal]
FRANK G. BIGELOW, [Seal]
as Receivers of the Northern
Pacific Railroad Company.

NORTHERN PACIFIC RAILROAD COMPANY,
By Wm. Nelson Cromwell, President.
Attest: Geo. H. Earl,
Secretary.

Seal of the Northern
Pacific Railroad Company
Chartered 1864, by Congress.

State of New York,
County of New York—ss.

On the 9th day of November, 1899, personally came before me, the undersigned, a Notary Public, within and for the county and State aforesaid, William Nelson Cromwell, the President of the Northern Pacific Railroad Company, and George H. Earl, the Secretary of said Company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as having executed the same, and they severally acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary acts as President and Secretary respectively of the said Company, and as the free and voluntary act of the said Company.

In witness whereof, I have hereunto set my hand and affixed my notarial seal of office, this 9th day of November, 1899.

John J. Tierney
Kings Co. N. Y.
Notary Public.

JOHN J. TIERNEY, Notary Public.
Kings County, Cert. filed in New York
County, N. Y.

598 EXHIBIT No. 54:—Offered in evidence at page 228, this Record.

This instrument, Made this seventh day of February, A. D. 1900, by and between the Northern Pacific Railway Company, a corporation created under the laws of the State of Wisconsin, party of the first part, and Frederick Weyerhaeuser and John A. Humbird, of the City of Saint Paul, in the County of Ramsey and State of Minnesota, parties of the second part, Witnesseth:

Whereas, by an instrument in writing made, executed and delivered on the 31st day of October A. D. 1899, by and between Edwin H. McHenry and Frank G. Bigelow, as Receivers of the Northern Pacific Railroad Company, and the Northern Pacific Railroad Company, parties of the first part, and the said Northern Pacific Railway Company, party of the second part, which said instrument was made, executed and delivered pursuant to a certain order entered on the 30th day of October A. D. 1899, in that certain suit in equity pending in the Circuit Court of the United States for the Eastern District of Wisconsin, wherein the Farmers' Loan & Trust Company is complainant and the Northern Pacific Railroad Company and others are defendants, the said Edwin H. McHenry and Frank G. Bigelow, as such Receivers and said Northern Pacific Railroad Company sold, assigned and transferred to said Northern Pacific Railway Company all and every right, claim and demand of every kind whatsoever

which the said Receivers or said Railroad Company or both did on the said 31st day of October 1899, have to demand, collect, sue for or recover against any person or persons, association, corporation or body whatsoever for injury, damage or trespass theretofore committed to or upon any and all lands within the State of Minnesota granted by the Congress of the United States to aid in the construction and equipment of the railroad of the Northern Pacific Railroad Company for which letters patent had issued to said Railroad Company or to which said company had a right to receive patents
599 thereafter, whether said lands were in place, selected or indemnity lands, including also all rights to recover for conversion or to compel an accounting for or on account of any timber or property theretofore taken from said lands; and

Whereas by deed dated the 19th day of January, A. D. 1900, the said party of the first part hereto has sold and conveyed to said parties of the second part hereto certain lands hereinafter described.

In consideration of said sale and in further consideration of the sum of One Dollar ($.00) to the party of the first part in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, the said party of the first part hereto hereby sells, transfers and assigns to the said parties of the second part hereto all and every right, claim and demand of every kind whatsoever which the said party of the first part acquired by virtue of said instrument of October 31st, 1899, or which has otherwise accrued to said party of the first part to sue for or recover against any person or persons, association, corporation or body whatsoever for injury, damage or trespass heretofore committed to or upon the following described lands situated in the Counties of Lake and St. Louis, in the State of Minnesota, to-wit:

The north half, the south half of the southwest quarter, and the southeast quarter of section three (3); the northeast quarter, of the northeast quarter, the south half of the northeast quarter, the southwest quarter of the northwest quarter, and the north half of the southeast quarter of section five (5); the southwest quarter of the northeast quarter, the east half of the northwest quarter, the northeast quarter of the southwest quarter, the south half of the southwest quarter, the northwest quarter of the southeast quarter, and the south half of the southeast quarter of section seven (7); the southeast quarter and the south half of southwest quarter
600 ter of section nine (9); the northwest quarter and the south half of section fifteen (15); the north half, the

north half of the southeast quarter and the southwest quarter of the southeast quarter of section seventeen (17); all in township Fifty-two (52), North, Range Twelve (12) West of the Fourth Principal Meridian:

Lots one (1), two (2), three (3), the southeast quarter of the northeast quarter the west half of the northwest quarter, the northeast quarter of the southwest quarter, and the west half of the southeast quarter of section one (1); the northwest quarter of the northeast quarter, the east half of the northwest quarter, the northwest quarter of the northwest quarter, the southeast quarter of the southwest quarter and the southeast quarter of section three (3); the south half of the northeast quarter, the northwest quarter, and the southeast quarter of section five (5); the south half of the northeast quarter, the north half of the southwest quarter, the southeast quarter of the southwest quarter, the north half of the southeast quarter and the southwest quarter of the southeast quarter of section seven (7); the east half of the northeast quarter, the west half of the northwest quarter, the northwest quarter of the southwest quarter, the northwest quarter of the southeast quarter of section eleven (11); the east half of the northeast quarter, the southwest quarter of the northeast quarter and the southeast quarter of section thirteen (13); the southeast quarter of the southwest quarter and the southeast quarter of section seventeen (17); the northwest quarter of the northeast quarter of section twenty-one (21); the east half of the northeast quarter, the northwest quarter of the northeast quarter and the southeast quarter of the southwest quarter of section twenty-three (23); the southeast quarter of the southwest quarter, the east half of the southeast quarter and the southwest quarter of the southeast quarter of section twenty-five (25); the northwest quarter of the northwest quarter and the southeast quarter of the southwest quarter of section
601 twenty-seven (27); the northeast quarter of the southwest quarter of section twenty-nine (29); the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter, the southwest quarter, the northwest quarter of the southeast quarter and the south half of the southeast quarter of section thirty-one (31); the west half of the northeast quarter, the east half of the northwest quarter, the northwest quarter of the southwest quarter, the south half of the southwest quarter and the southeast quarter of section thirty-three (33); the southeast quarter of the northeast quarter and the southeast quarter of section thirty-five (35); all in township Fifty-three (53) North, Range Twelve (12) West of the Fourth Principal Meridian:

All of section one (1); lots two (2), three (3), four (4), five (5), seven (7), and the southwest quarter of the northwest quarter of section three (3); lots five (5), seven (7), eight, (8), nine (9), the southwest quarter of the northwest quarter, the northeast quarter of the southwest quarter of section five (5); lots three (3), four (4), eight (8), and the northeast quarter of the southwest quarter of section seven (7); the northwest quarter of the northeast quarter and the northwest quarter of section nine (9); the north half of the northeast quarter of section eleven (11); all of section thirteen (13); lots one (1), two (2), three (3), four (4), five (5), six (6), the northwest quarter, the northeast quarter of the southwest quarter, the south half of the southwest quarter and the north half of the southeast quarter of section fifteen (15); lot two (2), the east half of the southwest quarter and the southeast quarter of section seventeen (17); lots two (2), five (5), the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, and the southeast quarter of the southwest quarter, of section nineteen (19); the east half of the northeast quarter, the southwest quarter of the northeast quarter and the south half of section twenty-one (21);
602 the east half, the east half of the west half; the northwest quarter of the northwest quarter and the southwest quarter of the southwest quarter of section twenty-three (23); all of section twenty-five (25); the east half, the south half of the southwest quarter of section twenty-seven (27); the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northwest quarter, and the northwest quarter of the southwest quarter of section twenty-nine (29); lot one (1), and the northeast quarter of the northwest quarter of section thirty-one (31); the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter, the north half of the southwest quarter, the southeast quarter of the southwest quarter, the southeast quarter of section thirty-three (33); the northeast quarter, the northeast quarter of the northwest quarter, the south half of the northwest quarter, the north half of the south half, and the southwest quarter of the southeast quarter, of section thirty-five (35); all in Township Fifty-four (54) North, Range Twelve (12) West of the Fourth Principal Meridian:

The north half of the northeast quarter, and the northwest quarter of section seven (7); the northwest quarter of the northeast quarter, the south half of the northeast quarter, the northwest quarter of the northwest quarter, the northeast quarter of the southwest quarter, the south half of the southwest quarter, and the southeast quarter of section thirteen (13); the west half of the northeast quarter, the east half of the northwest quarter, the northwest quarter of the northwest quarter, the northeast quarter of the southwest quarter, the south half of the southwest quarter, the north half of the southeast quarter, and the southeast quarter of the southeast quarter of section twenty-one (21); Lot one (1), the north half, the east half of the southwest quarter, the southeast quarter of section twenty-three (23); Lots one (1), two (2), six (6), eight (8), the north half of the northwest quarter, 603 and the northwest quarter of the southwest quarter of section twenty-seven (27); lots one (1), two (2), the northeast quarter, the northeast quarter of the northwest quarter, the south half of the northwest quarter, the northwest quarter of the southeast quarter of section twenty-nine (29); lot five (5), the north half of the northeast quarter, the east half of the southwest quarter, the northwest quarter of the southeast quarter, and the south half of the southeast quarter, of section thirty-one (31); lots one (1), two (2), three (3), four (4), five (5), the northwest quarter of the northeast quarter, the south half of the northeast quarter, the east half of the northwest quarter, the southwest quarter of the northwest quarter, the southeast quarter of section thirty-three (33); lot one (1), the northwest quarter, the north half of the southwest quarter, and the southeast quarter of section thirty-five (35); all in Township Fifty-five (55) North, Range Twelve (12) west of the Fourth Principal Meridian:

The northeast quarter of the northeast quarter, and the northwest quarter of the northwest quarter of section one (1); the northeast quarter of the northwest quarter, the west half of the southwest quarter of section three (3); the northwest quarter of the northwest quarter of section five (5); the northeast quarter, the east half of the northwest quarter, the southwest quarter of the northwest quarter, the north half of the south half, the southeast quarter of the southeast quarter of section seven (7); the northeast quarter of the northeast quarter, the south half of the northeast quarter, the north half of the southeast quarter, the southeast quarter of the southeast quarter of section nine (9); the northeast quarter of the southwest quarter, the south half of the southwest quarter, and the south half of the southeast quarter of section eleven (11); the northeast quarter, the northeast quarter of the southeast quarter; and the south half of the southeast quarter of 604 section thirteen (13); the northeast quarter, and the south half of the northwest quarter of section fifteen (15); all in Township Fifty-two (52) North, Range Thirteen (13) West of the Fourth Principal Meridian:

The north half of the northeast quarter, the southeast quarter of the northeast quarter, the northwest quarter of the northwest quarter, the south half of the northwest quarter, the northeast quarter of the southwest quarter, and the northwest quarter of the southeast quarter of section one (1): lot four (4) of section three (3); the northeast quarter of the southwest quarter of section five (5); lots two (2), four (4), five (5), six (6), seven (7), the south half of the northwest quarter, the northeast quarter of the southwest quarter, and the southeast quarter of the southeast quarter of section seven (7); lot two (2) of section nine (9); the south half of the northeast quarter, the east half of the southwest quarter, and the northwest quarter of the southeast quarter of section eleven (11); the southeast quarter of the southeast quarter of section thirteen (13); the southwest quarter of the northeast quarter, the northwest quarter of the southeast quarter, and the southwest quarter of the southeast quarter of section twenty-five (25); all in Township Fifty-three (53) North, Range Thirteen (13) West of the Fourth Principal Meridian:

The southeast quarter of the northwest quarter, and the northeast quarter of the southwest quarter of section one (1); the south half of the southwest quarter of section three (3); the southeast quarter of the northeast quarter of section five (5); the south half of the northwest quarter, the northwest quarter of the southwest quarter, and the west half of the southeast quarter of section nine (9); the southeast quarter of the southwest quarter of section thirteen (13); the northwest quarter of the northeast quarter of section fifteen (15);
lots one (1), four (4), and the southeast quarter of the
605 northwest quarter of section nineteen (19); lots three (3)
and seven (7); of section twenty-one (21), the southwest quarter of the northeast quarter of section twenty-three (23); lots four (4), seven (7), and the south half of the northeast quarter of section twenty-five (25); the southwest quarter of the northwest quarter, and the west half of the southwest quarter of section twenty-seven (27); lots one (1), two (2), five (5), seven (7), the southeast quarter of the northeast quarter, the southeast quarter of the southwest quarter and the southwest quarter of the southeast quarter of section twenty-nine (29); lot seven (7), and the southwest quarter of the northeast quarter of section thirty-one (31); the north half of the northeast quarter, the southeast quarter of the northeast quarter, the southeast quarter of the southwest quarter, and the southwest quarter of the southeast quarter of section thirty-five (35); all in Township Fifty-four (54) North, Range Thirteen (13) West of the Fourth Principal Meridian:

The northwest quarter of the southwest quarter, the southeast quarter of the southwest quarter, and the north half of the southeast quarter of section one (1); the southwest quarter of the northwest quarter of section five (5); the southeast quarter of the southwest quarter of section seven (7); the south half of the northeast quarter, the north half of the northwest quarter, the east half of the southwest quarter, and the northwest quarter of the southeast quarter of section nine (9); lot three (3) of section thirty-one (31); all in Township Fifty-five (55) North, Range Thirteen (13) West of the Fourth Principal Meridian:

The northeast quarter of the northwest quarter of section one (1); lot one (1), and the northwest quarter of the northeast quarter of section three (3); the east half of the northeast quarter, the north half of the southwest quarter, and 606 the southwest quarter of the southwest quarter of section five (5); the north half of the northeast quarter, and the east half of the southeast quarter of section seven (7); lot one (1), the northwest quarter of the northwest quarter, and the northwest quarter of the southwest quarter of section nine (9); the northwest quarter of the northeast quarter, and the northeast quarter of the northwest quarter of section thirteen (13); the northwest quarter of the northeast quarter, and the south half of the northeast quarter of section fifteen (15); lot five (5), and the northwest quarter of section seventeen (17); all in Township Fifty-two (52) North, Range Fourteen (14) West of the Fourth Principal Meridian:

The east half of the northwest quarter, and the southwest quarter of the northwest quarter of section fifteen (15); the southwest quarter of the northeast quarter of section nineteen (19); the northwest quarter of the southwest quarter of section twenty-one (21); the northwest quarter of the northeast quarter, the east half of the northwest quarter, and the north half of the southwest quarter of section twenty-nine (29); island number one (1); and lots five (5) six (6), and seven (7) of section thirty-three (33); all in Township Fifty-three (53) North, Range Fourteen (14) West of the Fourth Principal Meridian:

The southwest quarter of the northeast quarter, and the southwest quarter of the southeast quarter of section seven (7); the southeast quarter of the northeast quarter of section nine (9); the southeast quarter of the southwest quarter of section thirteen (13); the southwest quarter of the northeast quarter of section seventeen (17); lots one (1), two (2), the northwest quarter of the northeast quarter, and the northeast quarter of the southeast quarter of section nineteen (19); the southeast quarter of the southeast quarter of section twenty-one (21); the southeast quarter of the northwest quarter of section twenty-three (23) the southwest quarter of the southwest quarter of section twenty-seven (27); the northwest 607 quarter of the northeast quarter, the northwest quarter of the southeast quarter, and the south half of the southeast quarter of section thirty-one (31); the northwest quarter of the southeast quarter, and the south half of the southeast quarter of section thirty-three (33) all in Township Fifty-four (54) North, Range Fourteen (14) West of the Fourth Principal Meridian:

Lots one (1), four (4), the northeast quarter of the southeast quarter of section one (1); the south half of the northeast quarter, the east half of the southwest quarter, and the northwest quarter of the southeast quarter of section five (5); lot two (2), and the southwest quarter of the northeast quarter of section seven (7); the southwest quarter of the northeast quarter of section (9); all in Township fifty-five (55) North, Range Fourteen (14) West of the Fourth Principal Meridian:

Lots one (1), and three (3) of Section one (1); the southwest quarter of the northwest quarter, and the southeast quarter of the southeast quarter of section three (3); lots six (6), and seven (7) of section eleven (11); the west half of the northeast quarter and the southeast quarter of section thirteen (13); the southeast quarter of the northeast quarter, the southeast quarter of the northwest quarter, and the southwest quarter of the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter, and the southwest quarter of the southwest quarter of section twenty-three (23); all in Township fifty-two (52) North, Range Fifteen (15) West of the Fourth Principal Meridian:

The north half of the northeast quarter, the southwest quarter of the northeast quarter, the east half of the northwest quarter, and the north half of the southwest quarter of section one (1); the south half of the northeast quarter, and the north half of the southeast quarter of section three (3); the southeast quarter of the northeast quarter of section five (5); 608 the northwest quarter of the northeast quarter, the south half of the northeast quarter, the northwest quarter, the north half of the southwest quarter, the southeast quarter of the southwest quarter and the southeast quarter of section seven (7); the southeast quarter of the northeast quarter, the northeast quarter of the northwest quarter, the southeast quarter of the southwest quarter, and the north half of the southeast quarter of section eleven (11); lot one (1) of section thirteen (13); the northeast quarter of the northeast quarter of section fifteen (15); the south half of the southwest quarter, the north half of the southeast quarter, and the southwest quarter of the southeast quarter of section seventeen (17); the northeast quarter of the northeast quarter of section nineteen (19); the north half of the northeast quarter, the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter, the north half of the southwest quarter, the northwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter of section twenty-one (21); the southeast quarter of the northeast quarter of section twenty-three (23); all in Township fiifty-three (53) North, Range Fifteen (15) West of the Fourth Principal Meridian:

The Northwest quarter of the northwest quarter, the south half of the northwest quarter, and the southwest quarter of section fifteen (15); the north half of the northeast quarter, the northwest quarter of the northwest quarter, and the south half of the southeast quarter of section seventeen (17); lots three (3), five (5), eight (8), the north half of the northeast quarter, the northeast quarter of the southwest quarter, and the northwest quarter of the southeast quarter of section nineteen (19); lots one (1), three (3), four (4), five (5), the north half of the northeast quarter, the southwest quarter of the northeast quarter, the northeast quarter of the southwest quarter, the south half of the southwest quarter, and 609 the northwest quarter of the southeast quarter of section twenty-one (21), the southeast quarter of the northeast quarter of section twenty-three (23); the northwest quarter of the southwest quarter of section thirty-five (35); all in Township Fifty-four (54) North, Range Fifteen (15) West of the Fourth Principal Meridian:

The southwest quarter of the southeast quarter of section three (3); the southeast quarter of the southwest quarter, and lot four (4) of section seven (7); the southwest quarter of the northwest quarter, and the north half of the southwest quarter of section nine (9); lots one (1), nine (9), and ten (10) of section eleven (11); lots one (1), two (2), three (3), the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter, the northeast quarter of the southwest quarter, and the southeast quarter of section nineteen (19); lots two (2), three (3), four (4), six (6), eight (8), the north half of the northeast quarter, the southwest quarter of the northeast quarter, the south half of the northwest quarter, and the north half of the southwest quarter of section twenty-one (21); the north half of the northeast quarter, the south half of the northwest quarter, and the northwest quarter of the southwest quarter of section twenty-three (23); the southwest quarter of

the northwest quarter, and the east half of the southwest quarter of Section twenty-five (25); lots one (1), two (2), the north half of the northwest quarter, and the southeast quarter of the southeast quarter of section twenty-seven (27); lots one (1), four (4), eight (8) nine (9), the northeast quarter of the northeast quarter, the north half of the northwest quarter, the southwest quarter of the northwest quarter, and the northeast quarter of the southeast quarter of section twenty-nine (29); the southwest quarter of the southeast quarter of section thirty-one (31); the north half of the southeast quarter of section thirty-five (35); all in Township Fifty-five (55)
610 North, Range Fifteen (15) West of the Fourth Principal Meridian:

Lots one (1), two (2), and the southeast quarter of the southeast quarter of section one (1); in Township Fifty-three (53) North, Range Sixteen (16) West of the Fourth Principal Meridian:

The northeast quarter of the southwest quarter of section three (3); the northeast quarter, the northeast quarter of the northwest quarter, the south half of the northwest quarter, and the north half of the southeast quarter of section eleven (11); lot two (2), the northeast quarter of the northwest quarter of section thirteen (13); the southwest quarter of the northeast quarter, the southwest quarter of the northwest quarter, the northwest quarter of the southeast quarter and the southeast quarter of the southeast quarter of section twenty-three (23); the northeast quarter of the northeast quarter of section twenty-five (25); all in township fifty-four (54) North, Range Sixteen (16) West of the Fourth Principal Meridian:

The south half of the northeast quarter, the southwest quarter of the northwest quarter, the north half of the south half, and the southeast quarter of the southeast quarter of section thirteen (13); the south half of the southwest quarter of section fifteen (15); the south half of the south half of section seventeen (17); lots one (1), two (2), the south half of the northeast quarter, the northwest quarter of the northwest quarter, the south half of the northwest quarter, and the north half of the southwest quarter of section twenty-one (21); the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the northwest quarter, the southeast quarter of the southwest quarter, and the south half of the southeast quarter of section twenty-three (23); the northwest quarter of the northeast quarter, and the north half of the northwest quarter of section twenty-five (25); the northeast quarter of the northeast quarter, the west half of the north-

611 east quarter and the northwest quarter of section twenty-seven (27); lots one (1), two (2), and ten (10) of section twenty-nine (29); lot three (3), and the southeast quarter of the southeast quarter of section thirty-three; lot four (4), and the northeast quarter of the southeast quarter of section thirty-five (35); all in Township Fifty-five (55) North Range Sixteen (16) West of the Fourth Principal Meridian:

All the above described tracts of land containing, according to the United States Government survey thirty-one thousaid eight hundred and ninety-one and sixty-five one-hundredths (31,891.65) acres, more or less.

Excepting and reserving therefrom a strip of land for railroad right of way one hundred (100) feet in width, that is fifty (50) feet on each side of the center line of the main track of the Duluth & Iron Range Railroad, as the same is now located and constructed across the following described lands, said right of way having been conveyed to said Duluth & Iron Range Railroad Company by deed dated December 30th, 1884, to-wit:

The north half of the northwest quarter, the southeast quarter of the northwest quarter, the south half of the northeast quarter, and the northeast quarter of the southeast quarter of section one (1) in Township Fifty-four (54) North, Range Twelve (12) West of the Fourth Principal meridian:

The southwest quarter of the northwest quarter, the east half of the southwest quarter and lot one (1) of section twenty-three, in Township Fifty-five (55) North, Range Twelve (12) West of the Fourth Principal Meridian; all of the above described tracts of lands situate in the County of Saint Louis, State of Minnesota.

In Township fifty-four (54) North, of Range Nine (9) West of the Fourth Principal Meridian, the southwest quarter of the northeast quarter, the east half of the southwest quarter and lot four (4) of section nineteen (19).

612 In township fifty-four (54) North, of Range nine (9) West of the Fourth Principal Meridian, the south half of the northwest quarter and lots two (2), three (3) and four (4) of section twenty-seven (27).

In township fifty-four (54) North, of Range nine (9) West of the Fourth Principal Meridian, the southeast quarter of the northwest quarter and the northeast quarter of the southwest quarter of section thirty-one (31).

In township fifty-four (54) North, of Range nine (9) West of the Fourth Principal Meridian, Lot three (3) of section thirty-three (33).

In township fifty-three (53) North, of range ten (10) West of the Fourth Principal Meridian, the north half, the southwest quarter, the north half of the southeast quarter and the southwest quarter of the southeast quarter of section three (3).

In township fifty-four (54) north of Range ten (10) west of the Fourth Principal Meridian, the southwest quarter of the northeast quarter of section three (3).

In township fifty-five (55) North, of Range ten (10) West of the Fourth Principal Meridian. the southeast quarter of the northwest quarter of section thirty-three (33).

In township fifty-three (53) North, of Range eleven (11) West of the Fourth Principal Meridian, the southwest quarter of the northeast quarter of section three (3).

In township fifty-three (53) North, of Range eleven (11) West of the Fourth Principal Meridian, the fractional northwest quarter of Section five (5).

In township fifty-three (53) north of range eleven (11) West
of the Fourth Principal Meridian, the southwest quar-
613, ter of the southwest quarter of section seven (7).

In township fifty-three (53) North, of Range eleven (11) West of the Fourth Principal Meridian, the southwest quarter of the southwest quarter of section nine (9).

In township fifty-three North, of Range eleven (11) West of the Fourth Principal Meridian, the east half and the southeast quarter of the northwest quarter of section seventeen (17):

In Township fifty-three (53) North, of Range eleven (11) West of the Fourth Principal Meridian, the northwest quarter of the northeast quarter and the northeast quarter of the northwest quarter of section nineteen (19).

In township fifty-three (53) North, of Range eleven (11) West of the Fourth Principal Meridian, the southwest quarter of the northwest quarter of section twenty-one (21):

In township fifty-three (53) North, of Range eleven (11) West of the Fourth Principal Meridian, the northwest quarter of the northwest quarter of section thirty-one (31):

In township fifty-five (55) north, of Range Eleven (11) West of the Fourth Principal Meridian, the south half of the southwest quarter of section seven (7).

In township fifty-five (55) North, of Range eleven (11) West of the Fourth Principal Meridian, the southeast quarter of the northwest quarter of section twenty-three (23).

In township fifty-five (55) North, of Range eleven (11) West of the Fourth Principal Meridian, the northeast quarter of the southwest quarter, the south half of the southwest quarter and the southeast quarter of section twenty-seven (27).

In township fifty-five (55) North, of Range eleven (11) West of the Fourth Principal Meridian, the west half of the northeast quarter, the east half of the northwest quarter and the south half of section twenty-nine (29).

614 In township fifty-five (55) North, of Range eleven (11) West of the Fourth Principal Meridian, all of section thirty-one.

In township fifty-five (55) North, of Range eleven (11) West of the Fourth Principal Meridian, the west half of the northwest quarter of section thirty-three (33).

In township fifty-five (55) North, of Range eleven (11) West of the Fourth Principal Meridian, the east half of the southwest quarter of section thirty-five (35).

All the above described tracts of land containing according to the United States Government Survey thirty-six hundred fifteen and eight one-hundredths (3615.80) acres, more or less; and all situate in the County of Lake, State of Minnesota.

Including also all rights to recover for conversion or to compel an accounting for or on account of any timber or property heretofore taken from said lands.

In testimony whereof, the said party of the first part had caused these presents to be sealed with its corporate seal and signed by its President, the day and year first above written.

Corporate Seal

Northern Pacific
1896
Railway Company.

NORTHERN PACIFIC RAILWAY COMPANY.
By C. S. Mellen, President.
Attest:
P. W. Corbett,
Assistant Secretary.

Sealed and delivered in presence of:
E. N. Easton,
M. T. Bryers.

Compared with original by Thos. H. Pressnell, Examiner.

615 EXHIBIT No. 55: Duly certified. Offered in evidence at page 232, this record:

181 of Deeds page 251. (
Warranty Timber Deed.

Filed for record the 8 day of No-. A. D. 1899 at 10 o'clock a. m.

No. 21146.

This indenture, Made this 1st day of November in the year of our Lord one thousand eight hundred and ninety-nine between Franklin Lumber Company of Duluth a corporation organized and existing under the laws of the State of Minnesota party of the first part, and William O'Brien of Ramsey County Minnesota party of the second part,

Witnesseth, That the said party of the first part, for and in consideration of the sum of Twelve hundred and fifty Dollars, to them in hand paid by the said party of the second part, the receipt thereof is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey unto the said party of the second part, his executors, administrators and assigns forever, all the Pine Timber lying, standing or being upon all those tracts or parcels of land lying and being in the County of St. Louis and State of Minnesota described as follows, to wit: The Southwest quarter of the Northeast quarter of Section One (1) Township Fifty-four (54) North of Range Thirteen (13) West. Which said William O'Brien his heirs or assigns may cut and remove therefrom by or before January 20th 1901. Also all the pine timber lying standing and being upon all those tracts or parcels of land lying and being in the County of St. Louis and State of Minnesota described as follows to wit: The Southeast quarter of Northwest quarter and Northeast quarter of Southwest quarter Section One (1) Township Fifty-four (54) North of Range Thirteen (13) West. Together with the right to enter upon said land and cut and remove therefrom at any time within ten (10) years from date hereof the timber herein conveyed, hereby granting the right to cut such other timber and make such other alterations on
616 said land as may be required in the cutting and removal of said timber.

To Have and to Hold the Same, To the said party of the second part, his executors, administrators and assigns, for and during the term aforesaid, with the joint right of occupancy of said lands, and said part- of the first part, for itself its successors and assigns, do hereby covenant with the said party of the second part, his heirs and assigns, that it is well seized in fee of the lands and premises aforesaid, and has good right to sell and convey the pine timber thereon in manner and form aforesaid; that the same are free from incumbrances.

All taxes hereafter levied against said lands and that may become payable prior to the cutting of said timber are to be paid by second party previous to the penalties to attach for unpaid taxes on lands for town, county or state taxes, and until released to first party and the above described lands and premises, in the quiet, peaceable and joint possession of the said party of the second part, his heirs, executors administrators and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part will Warrant and Defend.

In testimony whereof, the said party of the first part has caused this instrument to be signed by its President and its corporate seal to be attached hereto, the day and year first above written.

FRANKLIN LUMBER COMPANY. [Seal]
By F. R. Webber, President. [Seal]

Signed, sealed and delivered
in presence of
W. E. Green
Alfred Jaques.

Franklin Lumber Company, Duluth
Minn. Corporate Seal.

State of Minnesota,
County of St. Louis—ss.

Rev. Stamp
$1.50 Can.

617 On this 1st day of November 1899, before me, appeared F. R. Webber to me personally known who being by me duly sworn did say that he is the President of the Franklin Lumber Company and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said F. R. Webber acknowledged said instrument to be the free act and deed of said corporation.

ALFRED JAQUES, Notary Public,
St. Louis County, Minnesota.

Notarial Seal St. Louis
County Minn.

EXHIBIT No. 56: Offered in evidence at page 235, this Record.

This agreement made in duplicate and entered into this 7 day of October 1898, by and between E. S. Howe, of Duluth, Minnesota, party of the first part, and Johnson-Wentworth Company, a Corporation formed and existing under the laws of the State of Minnesota, party of the second part.

Witnesseth, That the said party of the first part, in consideration of the payments to be made, as hereafter named, and being the owner of the timber on the lands described below, agrees to sell to the said party of the second part, all the Pine timber suitable for saw logs, being two and one-half million feet, from the following described lands in St. Louis County, Minnesota: E ½ of N E ¼, S W ¼ of N E ¼, S E ¼ of N W ¼, N W ¼ of S W ¼ and W ½ of S E ¼, in Section One (1), and S E ¼ of N E ¼, N W ¼ of N E ¼ of Section 12, all in Township 54, Range 13, West, and to put said saw logs afloat in the Main Cloquet River as early in the Spring 618 of 1899 as the weather will permit.

Said logs to be cut in a good workmanlike manner, square butted and cut to such lengths as said second party may from time to time direct. Each log to be plainly marked two feet from the butt end with the bark mark H I, and to be plainly end marked on each end with a marking hammer, to be furnished by said party of the second part.

No log will be accepted under the contract unless eight inches or more in diameter at the top end and one-half or more is sound timber.

All logs to be scaled sound by Scribners rule, by a competent log scaler to be selected by the Surveyor General of the Duluth District, and his scale to be the basis for final settlement between the parties hereto. Said logs to be scaled after they are banked. The expense of scaling said logs to be borne equally between the parties hereto, but the scaler is to be boarded free by the party of the first part.

In consideration of the faithful performance of all the foregoing agreements on the part of the said party of the first part, the party of the second part hereby agrees: To purchase said logs and to pay the sum of Five Dollars and fifty cents, ($5.50), per thousand feet, log measure, payment to be made in the following manner:

One Dollar ($1.00) per thousand feet during the Winter of 1898 and 1899; One Dollar and fifty cents (1.50), per thousand feet when the Camp breaks in the Spring; and on May 1st, 1899, to pay the Franklin Lumber Company, Two Dollars per thousand feet, less Five Hundred Dollars ($500), paid them by said E. S. Howe, and the balance which may be due on this contract, December 1st, 1899.

Both parties hereto mutually agree as follows:

1. That in case any trespass is committed by said party of the first part, all expenses and damages of whatsoever 619 nature, accruing to the second named party on account of the same, shall be charged to the said party of the first part.

2. That in case of any liens being filed against said logs, or any claim or demands made on account of trespass, the said second named party may appear and defend said logs against said claim, or lien, or claim of trespass, or adjust and settle the same at the expense of said party of the first part.

3. Whenever requested by said party of the second part, said party of the first part shall furnish to said party of the second part, a correct statement of the men employed, wages agreed upon and the amount due each man; also the amount of debts contracted of every kind and nature which may be enforced as a lien upon said logs.

4. That the second named party may retain and keep back from said payments, such sum or sums of money, as in its judgment will render it secure from any liens, or trespass claims, and all assignments made by said party of the first part of any payments to be made under this contract, shall be subject to the right of the second named party under this provision.

It is mutually agreed, by and between the parties hereto that all the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties.

In witness whereof, the said party of the first part has hereunto set his hand and seal, and the said part- of the second part has caused these presents to be signed by S. S. Johnson, its President, the day and year first above written.

E. S. HOWE, [Seal.]
JOHNSON WENTWORTH CO. [Seal.]
By S. S. Johnson.

In Presence of

....

....

620 EXHIBIT No. 57.—Offered in evidence at page 236, and re-offered at page 237, this record:

Nov. 12, 1898.

We will accept any logs under this contract attached hereto that are smooth and straight and 6″ in diameter on the top end.

Yours truly,
MICHAEL KELLEY,
JOHNSON WENTWORTH CO.

This agreement, Made in duplicate, and entered into this 22nd day of October, 1898, by and between Michael Kelley, of Duluth, Minnesota, party of the first part, and Johnson-Wentworth Company, a corporation formed and existing under the laws of the State of Minnesota, party of the second part.

Witnesseth, That the said party of the first part, in consideration of the payments to be made, as hereafter named, and being the lawful owner of the timber on the following described lands; agree to sell to the said party of the second part, not less than four million feet and not more than six million feet, of Pine saw logs, to be cut from the lands described as follows: NW 1-4 of the NW 1-4, NW 1-4 of the NE 1-4, S 1-2 of the NE 1-4, N 1-2 of the SE 1-4, NW 1-4 of the SW 1-4, S 1-2 of the SW 1-4, all in Section 19, Township 54, Range 12, West in St. Louis County, Minnesota; or from other lands which contains equally as good quality of timber and to deliver said saw logs into the Boom of the Knife Falls Boom Corporation, at Cloquet, Minnesota, during the Spring or driving season of 1899.

Said logs to be cut in a good workmanlike manner, square butted and cut to such lengths as the said party of the second part may from time to time direct. Each log to be plainly bark marked two feet from the butt end, with the bark 621 mark H I, and to be plainly end marked on each end with a marking hammer to be furnished by the said party of the second part. No log will be accepted under this contract, unless eight inches or more in diameter at the top end and one-half or more is sound timber.

All logs to be scaled sound by Scribners rule, by a competent log scaler, and his scale to be the basis for final settlement between the parties hereto. Said logs to be scaled after they are banked. The expense of scaling said logs to be borne equally between the parties hereto, but the scaler is to be boarded free by the party of the first part.

In consideration of the faithful performance of all the foregoing agreements on the part of the said party of the first part, the said party of the second part hereby agrees; to purchase said logs and to pay the sum of Six Dollars ($6) per thousand feet log measure for them, payments to be made in the following manner:

One Dollar ($1) per thousand feet for all logs banked and scaled on Jan'y. 1st, 1889, an additional Two Dollars ($2) per thousand feet when all the logs are banked and scaled, and the balance which may be due on this contract, ninety days after all the logs have been delivered in the Boom of the Knife Falls Boom Corporation, at Cloquet, Minnesota.

Both parties hereto mutually agree as follows:

1. That in case any trespass is committed by said party of the first part, all expenses and damages of whatsoever nature accruing to the said party of the second part on account of same, shall be charged to the said party of the first part.

2. That in case of any liens being filed against said logs, or any claim or demands made on account of trespass, the said

party of the second part may appear and defend said logs against said claim or lien, or claims of trespass, or ad-
622 just and settle the same at the expense of the said party of the first part.

It is mutually agreed, by and between the parties hereto, that all the covenants and agreements herein contained, shall extend to and be obligatory upon the Heirs, Executors, Administrators and Assigns of the respective parties.

In witness whereof, the said party of the first part has hereunto set his hand and seal, and the said part of the second part has caused these presents to be signed by S. S. Johnson, its President, the day and year above written.

MICHAEL KELLEY, [Seal.]
JOHNSON WENTWORTH COMPANY,
S. S. Johnson, Pres. [Seal.]

In Presence of

....
....

Add to Clause 2.

But in no event shall said party of the second part pay, or beholden, or obliged to pay, any part of said purchase price for said logs after any claim of lien or claim for trespass or any claim of whatsoever nature has been made against said logs, or brought to the attention or knowledge of said second party, until such claim is fully settled, discharged and satisfied.

EXHIBIT No. 58.—Offered in evidence at page 249, this record.
Duly certified.

Book "D" of Land Office Rects. Page 91.
No. 9713.

Receiver of U. S. Land Office to Malcolm A. McDonald. Receipt.

Filed for record 8 day of Aug. 1898 at 9:05 o'clock A. M.

Duplicate
No. [illegible]

623 Receiver's Office at Duluth, Minn., August 4, 1898.

Received from Malcolm A. McDonald of St. Louis County, Minnesota, the sum of Two Hundred Dollars and .... cents; being in full for the SE ¼ of NE ¼, NE ¼ of SE ¼, quarter of Section No. [illegible] in Township No. 54 N. of Range No. 12 W. 4th P. M. containing Eighty acres and .... hundredths, at $2.50 per acre. $200.00. J. M. SMITH, Receiver.

$ 65 cents testimony received. Number of written words 433; rate per 100 words 15 cents.

$10.00 for T. & S. 4024 filed Jany 20th 1898
Act of June 3, 1878.
As amended Aug. 4, 1892.

EXHIBIT No. 59.—Duly certified. Offiered in evidence at page 249, this record:

Book "G" of Patents Page 309.
No. 5396. Filed for Record the 6th day of Dec. A. D. 1897 at 11:45 o'clock A. M.

The United States of America.

To All to whom these Presents shall come—Greeting:

Certificate No. 14272. Whereas, Anna D. Smith of St. Louis County, Minnesota has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Duluth, Minnesota whereby it appears that Full Payment has been made by the said Anna D. Smith according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands" and the Acts Supplemental thereto; the 624 lot numbered five and the southeast quarter of the southwest quarter of section nineteen in Township fifty-four North of Range twelve west of the fourth principal meridian in Minnesota containing ninety-five acres and ten hundredths of an acre according to the Official Plat of the Survey of the said lands, returned to the General Land Office by the Surveyor General which said tract has been purchased by the said Anna D. Smith. Now Known Ye, That the United States of America in consideration of the premises and in conformity with the several acts of Congress in such case made and provided have given and granted and by these presents do give and grant unto the said Anna D. Smith and to [his] heirs the said Tract above described: To have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging unto the said Anna D. Smith and to her heirs and assigns forever.

In testimony whereof, I, William McKinley, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the fifth day of November in the year of our Lord one thousand eight hundred and ninety-seven and of the independence of the United States the one hundred and twenty-second.

By the President WILLIAM MCKINLEY.
By F. M. McKeon, Secretary.
C. H. BRUSH, Recorder of the General Land Office.

United States General
Land Office.

Recorded Vol. 26 page 214.

625 EXHIBIT No. 60.—Duly certified. Offered in evidence at page 249, this record:

Warranty Deed. 134 of Deeds page 8.
No. 9714.
Filed for Record the 8th day of August A. D. 898 at 9:05 o'clock A. M.

This indenture, Made this fourth day of August in the year of our Lord one thousand eight hundred and ninety-eight bebeen Malcolm A. McDonald (a single man) of the City of Duluth of the County of St. Louis and State of Minnesota party of the first part, and Michael Kelley of the City of Duluth of the County of St. Louis and State of Minnesota party of the second part,

Witnesseth, That the said party of the first part, in consideration of the sum of one thousand ($1000) Dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey unto the said party of the second part, his heirs and assigns, Forever, all those tracts or parcels of land lying and being in the County of St. Louis and State of Minnesota, described as follows, to wit:

The South East quarter (¼) of the North East quarter (¼) and the North East quarter (¼) of the South East quarter (¼) of section nineteen (19) in Township Fifty-four North of Range Twelve (12) West 4th principal meridian.

To have and to hold the same, Together with all the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, to the said party of the second part, his heirs and assigns, forever. And the said party of the first part, for himself his heirs, executors and administrators doth covenant with the said party of the second part, his heirs and assigns, that he is well seized in fee of the lands and premises aforesaid, and has good right to sell and convey the same in manner and form aforesaid; and that the same are free 626 from all incumbrances, and the above bargained and granted lands and premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part will warrant and defend.

In testimony whereof, The said party of the first part, hath hereunto set his hand and seal the day and year first above written.

MALCOLM A. McDONALD. [Seal.]

Signed, sealed and delivered
in presence of
L. H. Corcoran,
Alex Fraser.

U. S. I. R.
Documentary
$1.00
M. A. M. Aug. 4/98.

State of Minnesota,
County of St. Louis—ss.

On this fourth day of August A. D. 1898, before me, a Notary Public within and for said County, personally appeared Malcolm A. McDonald to me known to be the person described in, and who executed the foregoing and within instrument, and acknowledged that he executed the same as his free act and deed.

FRANK W. HEIMICK, Notary Public,
St. Louis County, Minnesota.

Notarial Seal
St. Louis County, Minn.

EXHIBIT No. 61.—Duly certified. Offered in evidence at page 249, this record:

Warranty Deed No. 8064. Book 120 of Deeds page 490.

Filed for record the 29th day of April A. D. 1898 at 12:05 o'clock P. M.

This indenture, Made this 28th day of April in the year of our Lord one thousand eight hundred and ninety-eight between Anna D. Smith and William T. Smith her husband of
627 Duluth, Minnesota, parties of the first part, and Michael Kelley of the same place party of the second part,

Witnesseth, That the said party of the first part for and in consideration of the sum of One thousand & 00/100 Dollars to her in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey unto the said party of the second part, his heirs and assigns, Forever, all that tract or parcel of land lying and being in the County of St. Louis and State of Minnesota, described as follows, to wit: Lot five (5) and the Southeast quarter of the South West quarter of Section Nineteen (19) Township fifty-four (54) North Range Twelve (12) West 4th PM. containing ninety-five & 1/100 acres more or less according to the government survey thereof.

To have and to hold the same, Together with all the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, to the said party of the second part, his heirs and assigns, Forever. And said Anna D. Smith and William T. Smith parties of the first part, for themselves their heirs, executors and administrators, do hereby covenant with the said party of the second part, his heirs and assigns, that they are well seized in fee of the lands and premises aforesaid, and have good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances, and the above bargained and granted lands and premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part will warrant and defend.

In testimony whereof, The said parties of the first part, have hereunto set their hands and affixed their seals the day
628 and year first above written.

ANNA D. SMITH. [Seal.]
WILLIAM T. SMITH. [Seal.]

Signed, sealed and delivered
in presence of
H. B. Fryberger,
L. H. Corcoran,

State of Minnesota,
County of St. Louis—ss.

On this 29th day of April A. D. 1898, before me a Notary Public within and for said County, personally appeared Anna D. Smith and William T. Smith to me known to be the persons described in, and who executed the foregoing and within instrument, and acknowledged that they executed the same as their free act and deed.

H. B. FRYBERGER, Notary Public.
St. Louis Co., Minn.

Notarial Seal
St. Louis County, Minn.

EXHIBIT No. 62.—Offered in evidence at page 250, this record.

This indenture, Made this 28th day of August in the year of our Lord one thousand eight hundred and ninety-nine between Michael Kelley and Lillian M. Kelley, his wife, both of Duluth, St. Louis Co., Minn. parties of the first part, and The Cloquet Lumber Co. parties of the second part,

Witnesseth, That the said part- of the first part, for and in consideration of the sum of Eight Hundred Dollars, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey unto the said parties of the second part, their executors, administrators, and assigns, forever, all the Pine Timber lying, standing or being upon all that tract or parcel of land lying and being in the County of St. Louis and State of Minnesota described as follows, to wit:

The Southwest quarter of the Northeast quarter (SW
629 ¼, NE ¼) and Lot No. five (5) of Section No. Nineteen (19)
in Township No. Fifty-four (54) North of Range Twelve (12) W of the 4th P. M. containing (95 15/100) acres more or less according to the Government Survey thereof, together with the right to enter upon said land and cut and remove therefrom at any time within ten (10) years from date hereof the timber herein conveyed, hereby granting the right to cut such other timber and make such other alterations on said land as may be required in the cutting and removal of said timber.

To have and to hold the same, To the said parties of the second part, their executors, administrators and assigns, for and during the term aforesaid, with the exclusive right of occupancy of said lands, said first parties covenanting not to enter upon said property for any purpose whatever while the herein granted timber remains uncut, and said parties of the first part, for themselves their heirs, executors and administrators, do hereby covenant with the said parties of the second part, their heirs and assigns, that they are well seized in fee of the lands and premises aforesaid, and have good right to sell and convey the same, and the timber thereon in manner and form aforesaid; that the same are free from incumbrances:

All taxes hereafter levied against said lands and that may become payable prior to the cutting of said timber are to be paid by second parties previous to the day appointed by law for sale of lands for town, county or state taxes, and the above described lands and premises, in the quiet, peaceable and exclusive possession of the said parties of the second part, their heirs, executors, administrators and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part will Warrant and Defend.

In testimony whereof, The said parties of the first part have hereunto set their hands and affixed their seals the day
629 and year first above written.

Signed, Sealed and Delivered
in Presence of MICHAEL KELLEY. [Seal.]
Geo. W. Power LILLIAN M. KELLEY. [Seal.]
J. A. Halley.
[$1 Canceled Rev. Stamp.]

State of Minnesota,
County of St. Louis—ss.

On this 28th day of August A. D. 1899, before me, a notary public within and for said County, personally appeared Michael Kelley and Lillian M. Kelley his wife both of Duluth, St. Louis Co., Minn. to me known to be the person- described in, and who executed the foregoing and within instrument, and acknowledged that [he] executed the same as their free act and deed.

Notarial Seal, GEORGE H. POWER,

Notarial seal,
St. Louis County, Minn.

Notary Public,
St. Louis County, Minn.

Office of Register of Deeds,
County of St. Louis—ss.

I hereby certify that the within Deed was filed in this office for record on the 27th day of Sept. A. D. 1899, at 4:40 o'clock P. M., and was duly recorded in Book 181 of Deeds, on page 210.

R. S. MUNGER, Register of Deeds.
By A. Hagberg, Deputy.

EXHIBIT No. 63.—Offered in evidence at page 275, this record:

Stump.	Feet.	Stump.	Feet.
10	70	26	820
11	80	27	900
12	90	28	1000
13	110	29	1100
14	130	30	1200
15	160		
16	190		
17	240		
18	300		
19	350		
20	400		
21	460		
22	530		
23	600		
24	680		
25	760		

630 EXHIBIT No. 64.—Offered in evidence at page 283, this record:

Surveyor General's Office.
Duluth, Minn., Jan. 30, 1901.
Bill of Pine Logs scaled by request of Northern Lumber Co.

Lot 5 and S. E. of S. W. ¼ Sec. 19-54-12W.
Scaled by Deputy P. Reilly, H. Seely & J. Murphy.
Hauled by ....

	Marks.	No. Trees.	Feet.
	H 1	8385	1,629 970
Total,			
Total Previously Reported,			
Total to Date,		8385	1,629 970

JOHN D. BRADY, Surveyor General, 5th District, Minn.
Scalage, $.......... By Alace Brady, Deputy.

Surveyor General's Office.
Duluth, Minn., Jan. 30, 1901.
Bill of Pine Logs scaled by request of Northern Lumber Co.

S. E. of N. E. ¼ & N. E. of S. E. ¼, Sec. 19-54-12.
Scaled by Deputy Relly, Seely & Murphy.
Hauled by ....

	Marks.	No. Trees.	Feet.
	H 1	6250	1,318 260
Total,			
Total Previously Reported,			
Total to Date,		6250	1,318 260

JOHN D. BRADY, Surveyor General, 5th District, Minn.
Scalage, $.......... By Alace Brady, Deputy.

631 EXHIBIT No. 65.—Offered in evidence at page 283, this record:

General Land Office, Regulations for Adjustment of Railroad Land Grants.

In Effect December 1, 1883.

The following circular instructions to registers and receivers, show the method of adjustment of railroad grants, and embody regulations in force June 30, 1883, (modified by rulings since November 7, 1879) with forms for verification of lists of selections, and also plats of survey of such roads, and railroads claiming right of way over the public lands. (See volume of rulings and decisions from July, 1881, to June, 1883. General Land Office, June, 1883, pages 349 to 410.

Railroad Division. (1).
Department of the Interior, General Land Office,
Washington, D. C., November 7, 1879.
Registers and Receivers, United States Land Offices:

Gentlemen: The following * * * circular instructions, relating to railroad grants, embrace the various regulations now in force under the rules and decisions of the Department respecting the subject, together with forms for selection, verification of lists, and proper certification and authentication of plats of survey of such railroads, and railroads claiming the right of way through public lands, and a table showing the respective granting acts, with reference by volume and page to the statutes containing the same.

These instructions are communicated for the guidance of district officers, surveyors-general, executives, and agents of States, officers of railroad corporations, and others having an interest in the matters recited; and they supersede those of June 24, 1875.

You will be governed by the regulations herein prescribed.

Very respectfully,
J. M. ARMSTRONG,
Acting Commissioner.

632 Regulations Concerning Railroads.

Modified in some instances by rulings since November 7, 1879.—(See Annual Reports General Land Office, 1880-'81, and Decisions of the Department of the Interior, from July, 1881, to June, 1883. Pages 349 to 410.)

I.

Rulings respecting Homestead and Pre-emption Claims.

Under the provisions of the acts of Congress granting lands to aid in the construction of railroads, wherein there are excepted from such grants the lands to which a valid pre-emption or homestead right had attached at the time when the grant may have become effective, the Department has decided as follows:

1. A homestead entry, made by a person duly qualified, which is in all respects regular and legal, excepts the land covered thereby from the operation of a railroad grant attaching during the existence of such entry.

Under this ruling it is no longer necessary to hold investigations for the purpose of inquiring into the period of residence of the claimant, his acts respecting settlement upon and cultivation of the tract, etc.; but, if the entry appears upon its face to be valid, no hearing will be ordered.

In case allegations are presented by a railroad company tending to show fraud or irregularity in the initiation of the entry, proper opportunity will be afforded for the presentation of proof thereof.

The law (section 2289, United States Revised Statutes) requires that a person making a homestead entry must be over twenty-one years of age, or the head of a family; and a citizen of the United States, or have declared his intention to become such; and, at the time of making such entry, he must swear that it is made for the purpose of cultivation, and not directly or indirectly for the use and benefit of any other person.

633 The foregoing regulation has reference only to lands within the granted limits of railroads, the Supreme Court of the United States having recently decided, in the case of Michael Ryan vs. Central Pacific Railroad Company, that the right to indemnity lands does not attach until those lands are regularly selected. Where, however, entries or filings have been admitted upon lands within the indemnity limits of any railroad grant, they will be allowed to stand awaiting the final adjustment of such grant, when, if the tracts are not required in satisfaction thereof, the entries or filings may be consummated.

2. A pre-emption claim which may have existed to a tract of land at the time of the attachment of a railroad grant, if subsequently abandoned and not consummated, even though in all respects legal and bona fide, will not operate to defeat the grant, it being held that upon the failure of such claim the land covered thereby inures to the grant as of the date when such grant became effective.

Upon this ruling, therefore, no hearings can be ordered for the purpose of ascertaining the facts respecting the settlement, occupation, improvement of the lands, etc., by such pre-emption claimant, for even if such facts were established, still, under the decision, the land inures to the grant.

II.

Application by Railroads to select Lands Previously Covered by Entries.

Where application is made by the agent of a railroad company to select lands on which homestead entries existed at the time the railroad grant took effect, but which it is alleged were fraudulent or irregular in their inception, you wili order hearings to determine the status of the entries, giving at least thirty days' notice in writing of the time and place of such hearing to all persons interested.

At such hearing your inquires should be directed to 634 the personal qualifications of the homestead party, and all facts touching the regularity of the entry. Inquiry respecting the residence of, and cultivation by, the party need not be made.

At the close of the hearing you will transmit to this office the testimony, prefaced by copies of the notices served, with your joint opinion thereon.

Where application is made by a railroad company to select lands on which pre-emption filings having heretofore been made and canceled, or where the same have expired by limitation of law, no other claim or entry appearing of record, you will admit the selections, in accordance with the rules governing the premises herein communicated. No proofs by the companies concerning such claims will hereafter be required.

III.

Applications by Settlers to Enter Lands Covered by Railroad Withdrawals.

Whenever [and] application to file or enter is presented, alleging upon sufficient prima facie cause that the land is excepted out of the railroad grant, you will give notice thereof to the proper representative of the railroad company within whose grant the land applied for is situated, and allow thirty days within which the company may present objections to the allowance of such filing or entry. Should the company fail to respond, or show any reason why, in your judgment, the application should not be allowed, you will admit it, but should the company present any allegations of the character contemplated in the preceding section, you will order an investigation, and be governed by the instructions therein given.

Whenever an application is presented which you deem it your duty to reject, you will indorse upon such application the date of its presentation and your reasons for rejection; and upon appeal being taken therefrom in the 635 manner and within the period prescribed by the Rules and Practice of the Department, you will forward the rejected application as a basis for your report to this office, together with the appeal and other papers which may be filed with you for that purpose. Your report should set forth in full the status of the land as shown by your records, including all filings, entries, remarks, and notes found thereon, or such reference to the same as will present the entire case to the attention of this office.

Selections by Railroad Companies.

By the seventh paragraph of section 2238 of the Revised Statutes it is provided that in the location of lands by States and corporations under grants from Congress for railroads and other purposes (except for agricultural colleges), the register and receiver shall each be entitled to a fee of one dollar for each final location of one hundred and sixty acres, to be paid by the State or corporation making such location.

1st. Under this law the registers and receivers are each entitled to receive a fee of one dollar for each final location of one hundred and sixty acres, or any quantity approximate thereto when the deficit is less than forty acres.

2d. When the several quantities shall have been definitely ascertained by you to inure to the grant, as hereinafter prescribed, the fees will then be due thereon.

3d. The State, through its grantee, or the grantee, as the case may be, is required to file with the register and receiver of the proper land office descriptive list of the tracts of land claimed as inuring under the grant within sections of .... miles each along the line of route, on both sides thereof, to be dated and verified by the signature of the selecting agent.

For agent's certificate, to be attached to each list, see Form A.

636 The party appearing as the agent of the grantee must file with the register and receiver written and satisfactory evidence, under seal, showing his authority to act in the premises.

In the preparation of the descriptive lists the register and receiver will afford the agent all reasonable facilities, taking care, however, not to interrupt the current public business.

The lists must be carefully and critically examined by the register and receiver, and their accuracy tested by the plats and records of their office.

When so examined and tested, and found correct in all respects, they will become final locations, and you will, on the payment of the requisite fees to the receiver, so certify at the foot of each list, according to Form B.

After such lists have been examined, and you have attached your certificate thereto, the same will be consecutively numbered, commencing with No. 1, for each railroad or separate grant. Upon the payment of the fees and certification of the lists by you, the register will post the selections in the Tract Book after the following manner:

"Selected ...., 18...., by A. B., agent for the ..... Rail.... Co., act ......, list No. ......;" and on the plats he will mark the tracts so selected "........ R. R."

After the selections are properly posted and marked on the plats, the lists will be transmitted to this office, accompanied by the evidence of the agent's appointment.

It is required that clear lists of approvals shall in every case be made out by you, or required of the selecting agents, after your examination of the tracts which you are prepared to certify, showing clearly and without erasure the description of the lands and the area of each tract; also the aggregate area, properly footed in the columns and set forth in the certificate.

637 For rejected selections you will then require a new application and list, with tender of fees, upon which you will note opposite each tract the objections appearing upon your records, and indorse thereon in full your reasons for refusing to certify the same.

Should the agent appeal, you will allow him to file the points of exception to your ruling in writing, properly drawn, and dated, which, when completed, you will forward to this office. No erasures should appear in such lists. The rejection will sufficiently appear from your notes and indorsements, and, if finally admitted, the lists will then be in complete and perfect order for filing. To secure uniformity, and to make the lists convenient for binding, properly ruled blanks will be furnished upon application.

Lists containing erasures received at this office will not be filed, but will be returned to you for perfection.

4th. The fees will be due in all cases where the service may have been rendered subsequent to the passage of said act of 1864.

5th. The receiver will account for the fees thus paid in his monthly and quarterly accounts, specially setting forth in the same the particular case or cases on which such fees had accrued, giving the name of road, number, and date of the list of selections for which they had been paid.

6th. By joint resolution No. 10, of January 30, 1864, "mineral lands" are not embraced in the grants made at the first session of the Thirty-eighth Congress, unless otherwise specially provided in the act or acts making the grants. (Revised Statutes, section 2346.)

Form of title page to be perfixed to the lists of selections will be found herewith, marked C.

V.

Indemnity Selections for Railroads.

In the adjustment of grants for railroads the principle 638 has, until recently, prevailed, that indemnity was allowed for all lands sold, reserved, or disposed of within the granted limits, whether such sale, reservation, or disposal occurred before or after the granting act, and the certifications and patents have been executed in conformity thereto.

In acordance with the recent decision of the Supreme Court in the case of the Leavenworth, Lawrence and Galveston Railroad Company vs. United States (2 Otto, 733), it is held by the Department that indemnity can only be allowed for lands sold, reserved, or disposed of in the granted limits by the General Government after the granting act and prior to the time when the railroad right attached, unless the grant be one of quantity specifically set forth in the act. In the adjustment of all grants it consequently becomes necessary to know for what lands lost, in place the indemnity selections are made, and with the view to that end you will require the companies to designate the specific tract for which the lands selected are claimed.

VI.

Costs of Surveying and Conveying Lands.

By a proviso to the act of Congress approved July 31, 1876 (19 Stat., p. 121), making appropriations for sundry civil expenses of the Government, etc., it is declared:

"That before any lands granted to any railroad company by the United States shall be conveyed to such company, or any persons entitled thereto under any of the acts incorporating or relating to said company, unless such company is exempted by law from the payment of such cost, there shall first be paid into the Treasury of the United States the cost of surveying, selecting, and conveying the same by the said company or persons in interest."

It has been decided by the Department that in the adjustment of all railroad grants falling within the terms of 639 that act the requirements thereof must be complied with. No certifications or patents can issue, therefore, to any railroad company affected by the statute until the costs of surveying, selecting, and conveying the lands have been paid.

The cost of surveying includes the expense of field and office work, and must be paid in the manner indicated in subdivision VII of this circular.

The cost of selecting is fixed by section 2238 of the Revised Statutes, before referred to, and payment thereof will be governed by the regulation prescribed in subdivision IV of these instructions.

The cost of conveying will be governed by the rates fixed by law for the preparation of certified copies, namely, fifteen cents for each one hundred words or fraction thereof. As a patent is required to be recorded, the payment must be made at double those rates, or at the rate of thirty cents for each one hundred words, in order that the necessary expense of conveying the land may be covered.

The provisions of the said act are construed as not applying to grants made to States to aid in the construction of railroads not named in the granting act; but where the grant is to a State in trust for the benefit of a company named- where the State [if] simply an intermediary and not a beneficiary- the payment required must be made.

VII.

Pacific Railroads under Acts of Congress Approved July 1, 1862, and July 2, 1864.

By section twenty-one of the latter act, these companies, are required to pay the cost of surveying and conveying the lands, in addition to the register's and receiver's fees exacted by section 2238 of the Revised Statutes, before mentioned. This cost of surveying and conveying is, by the decision of the United States Supreme Court at the December term, 1872, applicable to all the lands granted by acts of July 1,
1862, and July 2, 1864. Therefore, the "cost" will be
640 assessed and collected on all the lands within twenty
miles from the line of the road, where the grant is
under both acts.

To ascertain the cost of "surveying," which includes both surveying in the field and office work, the company will apply to the surveyor-general of the State or Territory in which the lands are situated. Upon ascertaining the sums due for surveying and office work for the "section or sections of road" for which selections have been or are to be made, a deposit of those sums must be made, to the credit of the Treasurer of the United States, with an authorized depositary. The duplicate of deposit must be filed with the surveyor-general; whereupon he will transmit to the register and receiver of the proper land office his certificate of such payment having been made, specifying how much was for surveying and how much for office work, as per Form D.

The surveyor-general's certificate and the evidence of the agent's appointment must accompany the lists of selection when transmitted by you to this office.

Let me here again direct your attention to the necessity of great care in the examination and testing of these lists, so that all conflicts may be avoided and improper selections be excluded, and that the vertified schedules may be absolutely accurate, thus avoiding embarrassment and delay to all concerned.

In the fourth section of the act of July 2, 1864, it is provided that the word "mineral", when it occurs in that act, shall not be held to include coal and iron. Therefore, iron and coal lands are subject to selection by the Pacific railroads; but all other minerals are expressly excluded from the grant, and must necessarily be so from all selections you may certify to this office.

VIII.

Relinquishments by Railroads in Favor of Settlers.

641 By an act of Congress approved June 22, 1874, (18 Stat., p. 194), it is provided- —

That in the adjustment of all railroad grants, whether made directly to any railroad company or to any State for railroad purposes, if any of the lands granted be found in the possession of an actual settler whose entry or filing has been allowed under the pre-emption or homestead laws of the United States subsequent to the time at which, by the decision of the Land Office, the right of said road was declared to have attached to such lands, the grantees, upon a proper relinquishment of the lands so entered or filed for, shall be entitled to select an equal quantity of other lands in lieu thereof from any of the public lands not mineral, and within the limits of the grant, not otherwise appropriated, at the date of selection, to which they shall receive title the same as though originally granted. And any such entries or filings thus relieved from conflict may be perfected into complete title as if such lands had not been granted: Provided, That nothing herein contained shall in any manner be so construed as to enlarge or extend any grant to any such railroad, or to extend to lands reserved in any land grant made for railroad purposes: And provided further, That this act shall not be construed so as in any manner to confirm or legalize any decision or ruling of the Interior Department which lands have been certified to any railroad company when such lands have been entered by the pre-emption or homestead settler after the location of the line of the road and prior to the notice to the local land office of the withdrawal of such lands from market."

By reference to the foregoing it will be perceived that an inducement is offered to such railroad companies as may be found entitled to lands held by actual settlers under the pre-emption or homestead laws to relinquish in favor of the
642 settlers, and receive other lands in lieu of those surrendered.

Upon the filing of such relinquishment this office is authorized to recognize the filing or entry of the settler in the same manner as if the land had not been granted to the railroad company.

To facilitate the adjustment of conflicting claims and give effect to the provisions of the act, the following rules are established:

1. When the superior right of the company is ascertained, and it is found that the claim of the settler is such that it would be admitted were the railroad claim extinguished, this office will, in all practicable cases, direct the attention of the officers of the company to the fact, and request an explicit answer whether or not the land will be relinquished.

At the same time it will be well for the party interested to seek for himself the relief indicated by direct application to the railroad authorities, and thereby aid in securing a speedy and satisfactory adjustment.

2. Relinquishment may be made by a simple waiver of claim where the patent or its equivalent has not been issued in behalf of the company; but where title has passed, formal reconveyance will be required, as in other cases of the surrender of patents.

3. When making relinquishment, the company will be permitted to name the tract selected as indemnity; and in order that conflict with pending applications may be avoided, such relinquishment and selection should be filed with the register and receiver, and be noted upon their records, before transmission to this office.

But in case the company desires to relinquish in favor of the settler, and trust to future selections for indemnity, such relinquishment may be sent direct to this office, and upon its receipt will be noted on the books, and the claim of the settler will be immediately released from suspension.

643 4. The selections must be of lands, not mineral, within the limits of the grant and withdrawal, free from other claims, and not reserved or otherwise appropriated at date of selection.

5. Where fees have been paid upon the original selections they will be applied to the indemnity. Where tracts not yet formally selected are relinquished, fees will be charged upon the indemnity selections.

6. The selections will be reported by the register and receiver in the same manner as original selections, with a reference to the act by its date and title; and opposite each tract annotation will be made of the tract surrendered, and the name of the settler in whose favor it is relinquished, with the number of his entry or filing. (See Forms E and F.)

Properly ruled blanks will be furnished for convenience in making the selections.

As the act is not mandatory upon the companies, but simply provides a mode of adjustment depending upon their voluntary action, and as the relief proposed is vital to many settlers, who through error resulting from various causes have made homes upon the lands granted, it is hoped, that by a liberal and mutual spirit of compromise and concession on the part of settlers and railroad officials its beneficent provisions may be made available, and substantial advantages to all may be secured at small cost and trouble to the parties concerned; and although the adjustment will involve this office in a large amount of labor, it will be cheerfully undertaken for the purpose of accomplishing a result so desirable.

IX.

Confirmation of Pre-Emption and Homestead Claims in Railroad Limits.

On the 21st of April, 1876, Congress, by an act entitled "An Act to confirm pre-emption and homestead entries of public lands within the limits of railroad grants in cases where such entries have been made under the regulations of the

644 Land Department," declared:

"That all pre-emption and homestead entries, or entries with any law of the United States of the public lands, made in good faith by actual settlers, upon tracts of land of not more than one hundred and sixty acres each, within the limits of any land grant, prior to the time when notice of the withdrawal of the lands embraced in such grant was received at the local land office of the district in which such lands are situated, or after their restoration to market by order of the General Land Office, and where the pre-emption and homestead laws have been complied with, and proper proofs thereof have been made by the parties holding such tracts or parcels, they shall be confirmed, and patent for the same shall issue to the parties entitled thereto.

"Sec 2. That when at the time of such withdrawal as aforesaid valid pre-emption or homestead claims existed upon any lands within the limits of any such grants which afterward were abandoned, and, under the decisions and ruling of the Land Department, were re-entered by pre-emption or homestead claimants who have complied with the laws governing pre-emption or homestead entries, and shall make the proper proofs required under such laws, such entries shall be deemed valid, and patents shall issue to the person entitled thereto.

"Sec. 3. That all such pre-emption and homestead entries which may have been made by permission of the Land Department, or in pursuance of the rules and instructions thereof, within the limits of any land grant at a time subsequent to expiration of such grant, shall be deemed valid, and a compliance with the laws and the making of the proof required shall entitle the holder of such claim to a patent therefor." (19 Stat., p. 35.)

It is required that every application under this act shall
be in such form as to distinctly set forth the facts in the case,
and the specific grounds upon which the party apply-
645 ing claims to be included in the terms of the law; and
after the application shall have been filed the applicant
shall be allowed to make proof of compliance with the pre-
emption or homestead laws as provided in this act.

Applications under this act must, in all cases, be made to the local land officers of the district within which the land claimed is situated, and the proof required must be taken before them, or before any person authorized by law to take the same.

No person shall be deemed to have lost any right who failed to make the proof required by the pre-emption or homestead laws by reason of any decision or ruling of this office prior to approval of this act, and all such persons may now make the proof required.

The proof must in all cases be filed with you, and you will transmit each case separately to this office, with such information as is in your possession relative thereto.

X.

Right-of Way Railroads.

The following is a copy of an act of Congress approved March 3, 1875, granting to railroads the right of way through the public lands of the United States:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands of the United States is hereby granted to any railroad company duly organized under the laws of any State or Territory, except the District of Columbia, or by the Congress of the United States, which shall have filed with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of one hundred feet on each side of the central line of said road; also the right to take from the public lands adjacent to the line of said road material, earth stone and timber necessary for the construction of said railroad; also grounds adjacent to such 646 right of way for station buildings, depots, machine shops, side-tracks, turn-outs, and water-stations, not to exceed in amount twenty acres for each station, to the extent of one station for each ten miles of its road.

"Sec. 2. That any railroad company whose right of way, or whose track or roadbed upon such right of way, passes through any canyon, pass, or defile, shall not prevent any other railroad company from the use and occupancy of the said canyon, pass, or defile, for the purposes of its road, in common with the road first located, or the crossing of other railroads at grade. And the location of such right of way through any canyon, pass, or defile shall not cause the disuse of any wagon or other public highway now located therein, nor prevent the location through the same of any such wagon or highway where such road or highway may be necessary for the public accomodation; and where any change in the location of such wagon road is necessary to permit the passage of such railroad through any canyon, pass, or defile, said railroad company shall, before entering upon the ground occupied by such wagon road, cause the same to be reconstructed at its own expense in the most favorable location, and in as perfect a manner as the original road; Provided, That such expenses shall be equitably divided between any number of railroad companies occupying and using the same canyon, pass, or defile.

"Sec. 3. That the legislature of the proper Territory may provide for the manner in which private lands and possessory claims on the public lands of the United States may be condemned; and where such provisions shall not have been made, such condemnation may be made in accordance with section three of the act entitled "An act (to amend an act entitled An act) to aid in the construction of a rail- and
647 telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes, approved July first, eighteen hundred and sixty-two," approved July second, eighteen hundred and sixty-four.

"Sec. 4. That any railroad company desiring to secure the benefits of this act shall, within twelve months after the location of any section of twenty miles of its road, if the same be upon surveyed lands, and if upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a profile of its road; and upon approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office; and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way; Provided, That if any section of said road shall not be completed within five years after the location of said section, the rights herein granted shall be forfeited as to any such uncompleted section of said road.

"Sec. 5. That this act shall not apply to any lands within the limits of any military, park, or Indian reservation, or other lands specially reserved from sale, unless such right of way shall be provided for by treaty stipulation or by act of Congress heretofore passed.

"Sec. 6. That Congress hereby reserves the right at any time to alter, amend, or repeal this act, or any part thereof.

"Approved March 3, 1875." (18 Stat., p. 482.)

The regulations under the law are as follows:

1. Any railroad company desiring to obtain the benefits of the law is required to file—

First. A copy of its articles of incorporation, duly certified to by the proper officer of the company, under its corporate seal.

648 Second. A copy of the State or Territorial law under which the company was organized (when organized

under State or Territorial law), with a certificate of the governor or secretary of the State or Territory that the same is existing law.

Third. When said law directs that the articles of association, or other papers connected with the organization, be filed with any State or Territorial officer, the certificate of such officer that the same have been filed according to law, with the date of the filing thereof.

No forms are prescribed for the above portion of the "due proofs" required, as each case must be governed, to some extent, by the laws of the State or Territory. Under the following regulations proper forms will be found herein.

Fourth. The official statement, under seal, of the proper officer, that the organization has been completed; that the company is fully authorized to proceed with the construction of the road according to the existing law of the State or Territory; and that the copy of the articles filed with the Secretary of the Interior is true and correct. (See Form I.)

Fifth. A true list, duly verified by the sworn statement of the president, under the seal of the company, showing the names and designation of its respective officers at the date of the presentation of the proofs at the Department. (See Form II.)

These may be transmitted directly to the Secretary of the Interior, or through this office, or they may be filed with the register of the land district in which the principal terminus of the road is to be located, who will forward them to this office.

II. Upon the location of any section of the line of route of its road, not exceeding twenty miles in length, the company must file with the register of the land district in which
649 such section of the road, or the greater portion thereof, is located, a map for the approval of the Secretary of the Interior, showing the termini of such portion of the road, its length, and its route over the public lands according to the public surveys.

The map must be filed within twelve months after the location of such portion of the road, if located upon surveyed lands, and if upon unsurveyed lands, within twelve months of the survey thereof. It must bear—

"First. Affidavit of the chief engineer of the company (or person employed to make the survey, if the company has no chief engineer), setting forth that the survey of the line of route of the company's road from ...... to ......, a distance of ...... miles (giving termini and distance), was made by him (or under his direction) as chief engineer of the company, (or as surveyor employed for the purpose, if such be the case), under authority of the company on or between certain dates (giving the same); and that such survey is accurately represented on the map. If the affidavit is made by the chief engineer of the company, it must be signed by him officially. (See Form III.)

"Second. Official certificate of the president of the company, attested by its secretary under its corporate seal, regarding the person signing the affidavit, either as to his being the chief engineer of the company or as to his employment by the company for the purpose of making such survey; that the survey was made under authority of the company; that the line of route so surveyed and represented by the map was adopted by the company, by resolution of its board of directors of a certain date (giving the date), as the definite location of the line of route of the company's road from ...... to ......, a distance of .... miles (giving termini and distance), and that the map has been prepared to be 650 filed for the approval of the Secretary of the Interior, in order that the company may obtain the benefits of the act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States." (See Form IV.)

III. It will be observed that the requirements of the law regarding the filing of the proper papers and maps are conditions precedent to the obtainment of the right to construct a railroad over the public lands, or to take therefrom material, earth, stone, and timber for its construction, or to occupy them for station or other purposes. It is therefore imperative that proper steps, as pointed out in this circular, should be taken by a company, and the approval of the Secretary of the Interior obtained, prior to the construction of any part of its road or its occupancy of the public lands in any manner.

IV. Should the company desire to construct its road over lands prior to their survey, it may file, in manner as heretofore indicated, a map of its surveyed route, without waiting until the lands are surveyed, and, upon approval thereof, may preceed with construction, but, immediately on the survey of the lands over which the road passes, the company must also file a map showing the line of route of its road over such lands, in order that the proper notes and records for the protection of its rights may be made.

V. Upon construction of any section of the line of its road the company must file with the register of the proper land district, for transmission to this office, a map of such constructed portion of road, bearing—

First. Affidavit of the chief engineer or person under whose supervision the portion the road was constructed that its construction was commenced on .... and finished on ....
(giving dates) that the line of constructed road is accu-
651 rately represented upon the map, and that it conforms
to the line of located route which received the approval of the Secretary of the Interior on ...... (giving date). (See Form V.)

Second. Certificate of the president of the company, attested by the secretary under the corporate seal, that the portion of the road indicated by the map was actually constructed at the time as sworn to by the chief engineer of the company (or person making the affidavit), and on the exact route shown on the map; that in its construction the road does not deviate from the line of route approved by the Secretary of the Interior, and that the company has in all respects complied with the requirements of the act of March 3, 1875, granting right of way through the public lands. (See Form VI.)

Any variation within the limits of one hundred feet from the central line of the road as located will not be considered a deviation from such line, but where, upon construction, it is found necessary to transgress the limits within which the company has right of way, the company must at once file proper map of amended route for approval.

VI. If the company desires to avail itself of the provisions of the law which grants the use of "ground adjacent to the right of way for station-buildings, depots, machine shops, sidetracks, turnouts, and water-stations, not to exceed in amount twenty acres for each station, to the extent of one station for each ten miles of its road," it must file for approval, in each separate instance, a plat showing, in connection with the public surveys, the surveyed limits and area of the grounds desired. Such plat must bear—

First. Affidavit of the chief engineer or surveyor by whom or under whose supervision the survey was made, to the effect that the plat accurately represents the surveyed limits and area
of the grounds required by the company for station or
652 other purposes, under the law (stating the purposes),
in ...... (giving section, township, range, and State or Territory); that the company has occupied no other grounds for station or other similar purposes upon public lands within

ten miles of the grounds designated on the plat, and that, in his belief, the grounds so represented are actually and to their entire extent required by the company for the necessary uses contemplated by law. (See Form VII.)

Second. Certificate of the president of the company, attested by the secretary under the corporate seal, that the survey of the tract represented on the plat was made under authority and by direction of the company by or under supervision of its chief engineer (or person making the survey), whose affidavit is attached; that such survey accurately represents the grounds actually and to their entire extent required by the company for station (or other) purposes in .... (giving section, township, range, State or Territory), allowed by the provisions of the act of Congress approved March 3, 1875, granting to railroads the right of way through the public lands; that the company has no station or other grounds upon public lands within a distance of ten miles from the grounds represented on the plat; and that the company, by resolution of its board of directors of a certain date (giving the date), directed the proper officers to present the plat for the approval of the Secretary of the Interior in order that the company may obtain the use of the grounds under the law above referred to. (See Form VIII.)

VII. Registers at the various land offices are directed to require that such papers and maps herein referred to as may be filed with them for transmission to this office shall conform to these regulations. Where differences of opinion may arise between themselves and the persons filing papers respecting the proper construction of these requirements the papers may be transmitted with letter stating the differing opinions.

653 They are also instructed, in any case where information is received by them of the construction of railroads within their districts, on the rights of which they have no official knowledge, to promptly advise this office of the facts in order that proper information or directions in the matter may be given them.

VIII. Action upon maps filed will be facilitated by presenting them in duplicate. The attention of companies seeking the benefits of this act should be specially directed to this suggestion, as serious delays and embarrassments are often incurred, through the inability of this office, owing to its limited clerical force, to prepare the necessary copies for transmission to the district offices.

Very respectfully,
J. M. ARMSTRONG,
Acting Commissioner.
Department of Interior,
November 7, 1879.
Approved. C. SCHURZ, Secretary.

Additional Instructions.

For additional instructions relative to indemnity lands within the grants to railroads, see circular of May 22, 1883, and Secretary of Interior's letter of July 11, 1883, on pages 891 and 892 herein.

Forms for Verification of Lists of Selections.

(A.)

.... of ....,
County of ....—ss.

I, ..., being duly sworn, depose and say
that I am the land agent of the .... formerly the ....;
that the foregoing list of lands, which I hereby select, is a correct list of a portion of the public lands claimed by the
654 said .... company inuring to ...., to aid
in the construction of the .... from ...., for
which a grant of lands was made by the acts of Congress approved ....; that the said lands are vacant, unappropriated, and are not interdicted nor reserved lands, and are of the character contemplated by the grant, being within the limits of .... miles on each side of the line of route for a continuous distance of .... miles, being for .... section of said road, starting from ...... and ending ....

.... [L. S.]

Sworn and subscribed before me this ...... day of .... 18.....

....

Note.—This affidavit may be made before either the Register or Receiver of the United States Land Office.

(B.)

United States Land Office,
..............., ...
.............., 18....

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the ...., under the grant to the ...., by act of Congress approved ...., and selected .... by ...., the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct. And we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of ...... miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands, nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act of Congress approved July 1, 1864, and contemplated by the circular of instructions dated November 7, 1879, addressed 655 by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said company have paid to the undersigned, the Receiver, the full sum of ...., in full payment and discharge of said fees.

.... Register.
.... Receiver.

(C.)

.... of..........

United States Land Office,
....
.............., 18....

The ...., under and by virtue of the acts of Congress entitled "..................," and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the .... of said company; being for the .... section (........ miles) of the same, commencing at .... and ending ....; the selections being particularly described as follows, to wit: ....

(D.)

United States Surveyor General's Office,

....

.... 18....

I, ..., Surveyor General for the United States in and for the ...., hereby report and certify that the .... has this day filed with me, at ...., a duplicate certificate of deposit, No. ...., dated .... of the

656 ...., to the credit of the Treasurer of the United States, showing that the sum of $........ has been deposited as cost of survey and $........ for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey $...............

Office work, $...............

In testimony whereof I have hereunto set my hand and official seal.

....,

Surveyor General.

Relinquishments by Railroads in Favor of Settlers.

(E.)

United States Land Office,

....

.... 18.....

I, ..., agent of the ....Rail-..........Company, hereby apply to select the following described lands, in lieu of lands inuring to said company, under act of ......, and surrendered by said company in favor of actual settlers thereon, as provided by act of June 22, 1874, entitled "An Act for the relief of settlers on railroad lands."

(F.)

United States Land Office,

.............., ...,

.............., 18.....

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the .... Rail...... Company, in lieu of lands heretofore granted for said company, and selected by ...., the duly authorized agent, and that we find the same to be correct; and we further certify that the filing of said list is al-

lowed and approved, and that the whole of said lands
657 are surveyed public lands of the United States, and
within the limits of .... miles.

We further certify that the foregoing list shows an assessment of the fees payable to us under the act of July 1, 1864, and that the said company have paid to the undersigned, the Receiver, the full sum of ...., in full payment of said fees.

...., Register.
...., Receiver.

Forms for Certification of Maps of Surveys, Permanent Locations, and Construction of Railroads.

Nos. 1, 2, 3 and 4 to be used when grant was direct to the railroad company. Nos. 1, 3, 4, 5, 6, and 7 to be used when grant was made to the State or Territory.

(No. 1.)

.... of ....,
County of ....—ss.

...., of ...., in said county and ...., being duly sworn, deposeth and says, that he is the chief engineer of the .... and has been such chief engineer since the ....; that during the period above named .... and .... were employed, and by this deponent as chief engineer for said railroad company, as deputy or division engineers; that the said engineers, as shown by their field-notes, verified under oath, did actually survey and mark upon the ground the line or route of the .... from .... to ...., in the sections and at the times respectively designated by dates, which are included between the flag-staffs upon and along the line or route of said railroad as delineated on this map, showing the line of the public survey in connection with the surveyed line of the route; and that the acts of said deputy or division engineers in the premises, were duly approved and accepted on behalf of
658 said company by this deponent as said chief engineer
of the ....

....,
Chief Engineer.

Sworn and subscribed this ...... day of ...., before me.
[Seal] ....,
Notary Public.

Note.—The map of location must, as shown in the above form, in all cases show the lines of the public survey in connection with the line of route.

(No. 2.)

Office of the ....,
............., ...,
. . .., 18.....

It is hereby certified that, in pursuance of the act of Congress approved July 1, 1862, entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," wherein a grant of land is made by the .... section to the ...., who are thereby authorized to construct a railroad and telegraph line from ...., and the act of July 2, 1864, amendatory thereof, which .... to construct said railroad, this map shows the location of the line or route of the .... from .... to ...., being a part of the line or route of said railroad as definitely fixed, in compliance with said acts of congress and in pursuance of the resolution of the board of directors of said company, passed on the ....; and that the dates of the field-work thereof are truly indicated along the line, from station to station, upon this map.

In testimony whereof the .... has caused the same to be signed by its president and engineer, and has attached hereunto its corporate seal, at ......, on the day and year first above written.

659 ....President.
....Chief Engineer.

Attest: ....,
Secretary.

(No. 3.)

..........F..........,
County of ....—ss.

...., of ...., in said county and ...., being duly sworn, deposeth and says, that he is the chief engineer of the said railroad from ...... to ......, being for .... section of .... miles, as shown by the line of route in connection with the lines of the public surveys on this map; that it has been completed and equipped as required by law, and that this line of route shows the correct location of the said railroad.

....,
[Seal] Chief Engineer.

Sworn and subscribed this .... days of ...., before me.
[Seal] ....,
Notary Public.

(No. 4.)

It is hereby certified, that........ .... is the chief engineer of the........, and that the location of the road as represented on this map and approved by the company; and also that the said portion of the said road has been completed and equipped in all respects as required by law.

....................President.

Attest:........................

Secretary.

[Seal]

(No. 5.)

Office of the ....

.............., ...

It is hereby certified that, in pursuance of the act of the legislative assembly of the ...., approved ...., entitled "........" this map shows, in connection with the public surveys, the actually surveyed line of route of the
660 ....from ....to........, as definitely fixed
in compliance with the act of congress approved ......, and in pursuance of the resolution of the board of directors of said railroad company, passed on the ...... day of ......; and that the dates of the field-work thereof are truly indicated along the line, from station to station, upon this map.

In testimony whereof the .... has hereunto attached its corporate seal and caused the same to be signed by the president and engineer, at ...., in the day and year first above written.

[Seal] ....,

President.

....,

Chief Engineer.

Attest: ....,

Secretary.

(No. 6.)

I, ..., governor of the ...., do hereby certify that this plat or map of the ....has been duly filed in my office by the railroad company, and shows, in connection with the public surveys, the location of the line of route as actually surveyed of the .... "from .... to ....?" as definitely fixed, in compliance with the act of Congress approved ...., entitled "An act ....;" and with the act of the legislative assembly of the ...., approved ...., entitled ".........." granting certain lands to the railroad herein named.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the ....

Done at ...., this .... day of ....

[Seal] ....,

Governor.

Attest: ....,

Secretary of ....

(No. 7.)

Executive Office, ...,

....

I, ..., governor of the ...., 661 do hereby certify that this plat or map of the .... has been duly filed in my office by the said .... company, and shows that portion of the said railroad commencing at .... and ending at ...., which has been completed and equipped as required by the act of Congress approved ...., and the act of the legislative assembly of the ...., approved ...., entitled "..........," granting lands to the said railroad company.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the ....

Done at ...., this .... day of ....

[Seal] ....,

Governor.

Attest: ....,

Secretary of ....

EXHIBIT No. 66:—Duly Certified. Offered in evidence at Page 322, this Record.

F.

Statement of Second Indemnity Limits North Pac. R. Rd. Co. in Minnesota, West of Thomson Junction.

Statements		acres.
	Total of Company's list after correction of areas filed with letter of Britton and Gray of Apr. 25, 1899..	356,212.35
A and Supplemental A	of which there are found to be good for bases........................	285,198.84
	Difference Thus caused	71,013.51

B	Selected as swamp, act 1860 but subsequently sold or entered, yet, if land is swamp it was excepted under prior grant		2,421.34	
	Approved to Lake Sup. and Miss. R. W. Co. but are part of North Pac. grant		50,752.58	
	Not in primary limits		6,493.97	
	Withdrawn in 1858, act 1857, and thus excepted from grant (168 U. S., 608).		5,639.58	
	Miscellaneous causes		5,706.04	
			71,013.51	71,013.51
C	The office finds west of Thomson Junction not included in Company's list but which appear to be good bases for 2nd Indemnity selections.			5,181.17
	Add to this good bases in Company's list			285,198.84
	Makes a total available bases of...			290,380.01
	Bases has been used by the Company as follows:			
	Approved selections		236,024.49	
	Furnished for lands confirmed to company by decree of Court		54,857.14	
			290,881.63	
	Of [this] bases there were furnished from land between Thomson Junction and Duluth	1,261.96		
	East of Duluth	916.66	2,178.62	
	Quantity furnished west of Thomson Junction		288,703.01	
	If the bases thus used East of the Junction is good, there is then left to the credit of the Company west of that point		1,677	
			290,380.01	290,380.01
	But of the total lands confirmed to the Company by decree of Court there are for which no valid bases has yet been supplied.			4,203.23
	Crediting the company thereon with the above balance of			1,677.
	it is still deficient in bases for lands approved and confirmed with no lands available, west of Thomson Junction, to make good this deficiency.			2,526.23

[663] East of Thomson Junction.

		Acres
There are, however, between the Junction and Duluth available as basis for 2nd indemnity		4,706.21
but against which must be charged the deficiency of	2,526.23	
Used in approved limits	1,261.96	3,788.19
Leaving to credit of Company		918.02

East of Duluth.

The Supreme Court having decided that the Company's grant extends to Ashland, there are found East of Duluth of the class available as bases for second indemnity selection		28,431.84
of which the Company has used as bases for selections in First indemnity belt, approved	755.20	
and as bases in second indemnity belt approved	916.66	1,671.86
Leaving to credit of Company		26,759.98
To which add credit above shown		918.02
Making total credit		27,678.00

EXHIBIT No. 67:—Duly Certified. Offered in evidence at page 323, this Record.

F. W. C.
1069-1900. Department of the Interior, F. W. C.
Washington. S. V. P.
W. V. D. January 16, 1901.

664 The Commissioner of the
General Land Office.

Sir: From the reports made in your office letters of May 3, and 12, and December 22, last, it appears that although call has been made upon the Northern Pacific Railway Company, as successor in interest to the Northern Pacific Railroad Company, to assign a specific loss as a basis for each of the tracts within its indemnity belts and awarded to said company in its suit against the St. Paul and Pacific Railroad Company, it has failed to make such assignment as to 4203.23 acres within the second indemnity belt. It further appears, that the lands included in pending unapproved selections within the second indemnity belt of the grant to said company in the State of Minnesota, when added to those heretofore patented to or awarded to said company in the suit referred to, exceed the total amount of lands that "have been granted, sold, "reserved, occupied by homestead settlers, pre-empted or otherwise "disposed of subsequent to the passage of the act of July second, eighteen "hundred and sixty-four" within the primary limits of the grant for said Northern Pacific Railroad Company within said State.

The question as to the initial point of said grant upon Lake Superior having been finally determined (U. S. v. Northern Pacific R. R. Co., 177 U. S., 435), and also the question as to the effect of the withdrawal made May 26, 1864, under the grant of May 5, 1864, to aid in the construction of the Lake Superior and Mississippi Railroad (Northern Pacific R. R. Co. v. Rooney, 30 L. D.,) there would seem to be no reason why the company should not speedily comply with the requirement of your office in assigning a basis for all lands awarded to it in the suit referred to and you are therefore directed to again call upon said company requiring it to file a specification of losses as bases for said lands within ninety days, 665 and at the expiration of the time allowed make due report of action taken.

Referring to the pending unapproved selections within the second indemnity belt, as losses have been presumably named as basis for such selections there would seem to be no objection to the adjudication of such selections, and where the land assigned as a basis for a selection is not such as in your opinion would entitle the company to resort to its second indemnity belt in satisfaction thereof, the selection should be held for cancellation allowing the company the usual right of appeal. In this way the question as to the availability of the lands assigned as bases for the selection of lands within the second indemnity belt will come properly before this Department for consideration.

Herewith are returned the papers accompanying your letters above referred to. Very respectfully,

E. A. HITCHCOCK,

Secretary.

EXHIBIT No. 68:—Offered in evidence at page 324, this record. Objection of Defendant acquiesced in; offer withdrawn and Exhibit omitted.

EXHIBIT No. 69:—Duly certified. Offered in evidence at page 348, this record.

666 W. J. D. S. S. M.

Survey projected on map......... 18 miles to inch.
Withdrawal placed on map, scale.. 30 " "

F 4-207 a. Withdrawal.
$\frac{2}{3}$ inch = 20 m.
Survey
$\frac{2}{3}$ inch = 12 miles.

Department of the Interior,
General Land Office,
Washington, D. C., July 8, 1898.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed tracing of so much of the map filed May 7, 1864, by the Lake Superior and Mississippi Railroad Company as shows its line of road from Saint Paul to Lake Superior, and the withdrawal of lands ordered thereon May 26, 1864, for the benefit of said Company, is a true and literal exemplification of the original on file in this office.

Seal
United States
General
Land Office.

In testimony whereof, I have hereunto subscribed my name and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of General Land Office.

FOLD OUT IS TOO LARGE TO BE FILMED

667 EXHIBIT No. 70:—Duly certified. Offered in evidence at page 349 this record.

668 1069-1899.

W. V. D. Department of the Interior, F. W. C.

Washington,

March 19, 1901.

The Commissioner of the
General Land Office.

Sir: The Department is in receipt of your office letter of February 14th last, requesting instructions as to the extent of the withdrawal ordered upon the map of probable route of the Lake Superior and Mississippi Railroad. This inquiry is made because of the decision of this Department in the case of Northern Pacific R. R. Co. v. Rooney (30 L. D., 403), wherein it was held that lands reserved on account of a grant made prior to the grant of July 2, 1864 (13 Stat., 356), to the Northern Pacific Railroad Company, and continued in reservation until after the definite location of the line of the Northern Pacific road, are excepted from the Northern Pacific grant, but do not afford a basis for the selection of lands within the second indemnity belt of that grant, provision for which is made by the Joint Resolution of May 31, 1870 (16 Stat., 378).

It appears that on May 7, 1864, two days after the passage of the Act of May 5, 1864 (13 Stat., 64), making a grant to aid in the construction of the Lake Superior and Mississippi Railroad, there was filed in your office by the Lake Superior and Mississippi Railroad Company a map of the probable route of its line of road, the same being accompanied by a request for a withdrawal of "the lands within the limits prescribed by said Act of Congress." The act provides for place limits of ten miles on each side of the line of road, and for indemnity limits of the next ten miles on each side thereof. On the same day your office submitted to the Secretary of the Interior the question whether the withdrawal, if made, should be of lands "within the ten mile limits only, or within both 669 limits." By letter of May 23, 1864, the delegation in Congress from Minnesota requested the Secretary of the Interior to direct a withdrawal of "lands along the probable line of said railroad for twenty sections in width." The Secretary of the Interior, by letter of May 26, 1864, ordered your office to make a withdrawal of "a body of lands about twenty miles in width along the probable route of railroad 'from St. Paul to Lake Superior' as indicated on the diagram submitted by your office." So far as can now be ascertained, the "diagram" referred to by the Secretary of the Interior is the map of probable route filed by said Company May 7, 1864. No other diagram is specifically mentioned in any of said letters, or found among the files. May 26, 1864, your office in a letter to the local office made a withdrawal of "a body of lands about twenty miles in width, as indicated on the enclosed diagram." This diagram is simply a reproduction of the map or probable route filed by said company. This map is a Minnesota State map of that period, upon which the probable route of said railroad is indicated by a black line drawn with pen and ink. Along and on each side of this black line are two colored bands, one red and the other blue, which are probably intended to represent place and indemnity limits, but they are not so designated on the map, and their width is not stated. Measured according to the scale of the map, the red bands, corresponding to place limits, are about six miles in width on each side of the line of probable route, and the blue bands, corresponding to indemnity limits, are about nine miles in width on each side. No specific mention of these colored bands is made in any of said letters and nothing upon the map of probable route indicates that such bands are intended, in and of themselves, to fix the extent of the withdrawal as requested or made, or that they are anything more than a mere approximation of place and indemnity limits. 670 The withdrawal ordered by the Secretary of the Interior and made by the Commissioner of the General Land Office was of "a body of lands "about twenty miles in width." The place limits of ten miles on each side of the line of road provided for in the granting act, taken together, make a body of lands twenty miles in width. The place and indemnity limits, therein provided for, taken together, make a body of lands forty miles in width. Measured according to the scale of the map here under consideration, the place limits supposed to be represented by the red bands make a body of lands about twelve miles in width, and the place and indemnity limits, supposed to be represented by the red and blue bands, taken together, make a body of lands about thirty miles in width. The objections to giving these colored bands controlling effect in determining the extent of said withdrawal are obvious and insuperable. Their width is not definite, and their purpose is not certain. The information which they disclose is not nearly so definite or certain as that conveyed by the terms of the letters ordering and making the withdrawal. They do not conform in width to the limits prescribed in the granting act, and, whether taken together or separately, do not constitute a body of lands of the width described in the withdrawal as ordered and made. Due regard can only be given to the terms of the granting act, to the fact that the Secretary of the Interior in ordering the withdrawal was, in part at least, answering the inquiry of the Commissioner of the General Land Office as to whether the withdrawal should be of the lands in the place limits only, or of the lands in both place and indemnity limits, and to the terms of this withdrawal, by holding that the purpose and effect of the withdrawal was to withhold from disposition for the time being the lands which, if the line of probable route should become the line of definite location, would fall within the place limits of the grant and pass to the railroad company.

671 The withdrawal will be given effect accordingly.

Herewith are the papers.

Very respectfully,
E. A. HITCHCOCK,
Secretary.

672 EXHIBIT No. 71:—Duly certified. Offered in evidence at page 349, this Record.

673 L. L. M.

F. 4-207 a.

C. A. O. Department of the Interior,
General Land Office,
Washington, D. C., April 15, 1901.

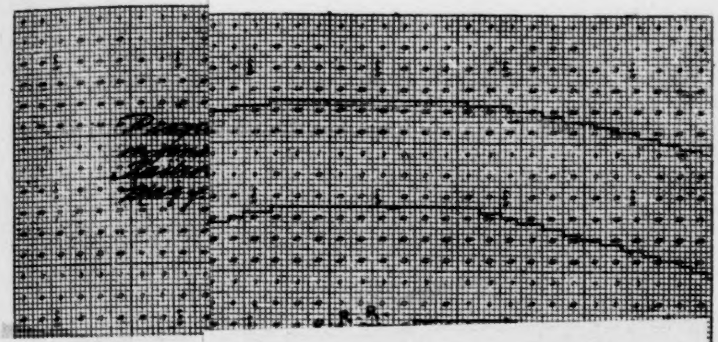
I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of the diagram prepared by this office, to show the limits of the withdrawal made May 26, 1864, on the map of General Route, filed May 7, 1864, by the Lake Superior and Mississippi Railroad Company, is a true and literal exemplification of the original now on file in this office.

[Seal of said U. S. Land Office]

In Testimony Whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of General Land Office.

[10-cent I. R. Stamp Canceled.]



FOLD OUT IS TOO LARGE TO BE FILMED

embraced in Schedule "C" amounting to 19,140.12 acres, of which 18,580.53 acres lie between Thomson Junction and Du-

674 EXHIBIT No. 72:—Duly Certified. Offered in evidence at page 349, this record.

1898-122097. S. S. M.
Refer in reply to this initial: W. O. C.
"F." J. V. W.
W. J. D.

Department of the Interior,
General Land Office,
Washington, D. C., March 4, 1899.

Address only the
Commissioner of the General
Land Office.

The Honorable,
The Secretary of the Interior.

Sir: This office is in receipt of a letter dated November 21, 1898, from the Hon. Thomas Ryan, Acting Secretary of the Interior, calling for report as to whether the Northern Pacific Railroad Company has ever assigned bases, or otherwise shown itself to be, as against the United States, entitled to the lands awarded it under the decree entered in accordance with the decision of the United States Supreme Court, reported in 139 U. S., page 1, so far as the said lands are within the first and second indemnity belts of the said company's grant.
675 And also as to what method, if any, has been adopted and is being pursued by this office in determining whether, in addition to the indemnity lands decreed to said company by that decision, it is entitled to the indemnity lands embraced in selections which were pending at the time of said decision and which have since been presented on account of the grant.

In answer to your first inquiry, you are advised that the lands awarded the Northern Pacific R. R. Co., within its first and second indemnity belts, under decrees of the United States Supreme Court, March 2, 1891 (139 U. S., 1) are embraced in Schedules C & D, attached to a certified copy of said decree on file in this office.

Schedule "C" embraces the lands within the first indemnity belt, amounting to about 92,852.45 acres.

Schedule "D" embraces the lands within the second indemnity belt, amounting to 59,060.37 acres.

On April 26, 1892, the Northern Pacific R. R. Co. filed lists 9A, 9B, and 96, designating bases for a portion of the lands embraced in Schedule "C" amounting to 19,140.12 acres, of which 18,580.53 acres lie between Thomson Junction and Duluth within the 10 mile limits of the grant to the Saint Paul and Duluth Railroad Company, and 559.59 acres lie east of the terminal of the grant to the Northern Pacific Railroad Company, and do not, under the present rulings of the Department, constitute a valid basis for indemnity by said company. (23 L. D., 428).

On May 10, 1892, the Northern Pacific R. R. Co. filed Lists 18A and 18B, designating bases amounting to 73,707.75 acres for the residue of the lands embraced in Schedule "C."

Of this amount 27,906.55 acres are East of Thomson Junction
within the 10 and 20 mile limits of the grant to the Saint Paul
and Duluth Railroad Company, and do not constitute
676 valid bases for indemnity selections by the Northern
Pacific R. R. Co. (23 L. D., 428).

Of the said designation 45,801.20 acres are west of said Junction within the 10 and 20 mile limits of the grant to the Saint Paul and Duluth Railroad Company and appear to be valid. Thus leaving 47,051.25 acres embraced in Schedule "C" for which no valid designation has been made.

On June 16, 1892, the Northern Pacific Railroad Company filed List No. 19A., designating bases for the lands embraced, in Schedule "D" within the second indemnity belt of its grant, amounting to 59,512.92 acres. Of this designation 6,676.48 acres are west of Thomson Junction within the 20 mile limits of the grant to the Saint Paul and Duluth Railroad Company, and not falling within the preliminary withdrawal of March 26, 1864, appear to have been lost between the date of the Northern Pacific grant and the definite location of its line of road, November 20, 1871; and would, therefore, appear to be valid bases for indemnity lands within the company's second indemnity belt. (19 L. D., 233.)

Of the said designation there are 4,025.66 acres which lie east of Thomson Junction and within the 20 mile limits of the grant to the Saint Paul and Duluth Railroad grant, and do not from valid bases for indemnity for the Northern Pacific R. R. Co. (24 L. D., 320).

And 630.13 acres have been used as bases for approved clear lists of indemnity within the first indemnity belt, or 30 mile limits of the said company's grant.

The residue of said list of designations, 48,180.66 acres, are within the 20 mile limits of said company's grant, and also within the White Earth Indian Reservation which was created by treaty of March 19, 1867, and the lands therein appear to

have been lost to the Company's grant subsequently to July 2, 1864, and prior to November 20, 1871, and would,
677 therefore, appear to be proper bases for indemnity within the company's second indemnity belt.

Thus leaving 4,203.23 acres embraced in Schedule "D" for which no valid basis has been designated.

In the absence of an adjustment of the Northern Pacific R. R. Company's grant, (which is now in progress), this office for the purpose of this report has ascertained by a careful examination of the primary limits that the quantity of land lost to said grant between July 2, 1864, the date thereof, and November 20, 1871, the time of the definite location of the road, being the class of lands available as bases for selections within the second indemnity belt, was apparently 295,851.63 acres.

Of this quantity, however, 945.32 acres lie within the ten mile limits of the grant to the Saint Paul and Duluth Railroad Company between Thomson and Duluth, and 630.13 acres have been used as bases for approved first indemnity selections; and these amounts must be deducted from such quantity leaving 294,277.58 acres available bases for second indemnity selections.

The records show that there have been approved to said company within its second indemnity limits, 236,024.49 acres, which added to the 59,060.37 acres in Schedule "D," awarded the company by the Supreme Court of the United States (139 U. S., 1), make 295,084.86 acres received by the company within its second indemnity limits. Thus showing an excess over and above the lands available as bases, of 807.28 acres.

Whether the adjustment of the company's grant, when completed, will materially change these figures cannot now be stated; but it appears that the excess in the second indemnity limits above the class of lost lands available as bases will not be diminished.

The final outcome of the suit instituted by the company against the United States relative to the Eastern ter-
678 minal of its grant will determine the validity of the company's loss between Thomson and Duluth, as first indemnity, and may materially change the conclusions arrived at in the foregoing statement as to such indemnity. Upon the completion of the adjustment of the company's grant a full report thereof will be made to the Department.

Very respectfully,
BINGER HERMANN,
Commissioner.

EXHIBIT No. 73:—Duly certified. Offered in evidence at page 349, this Record.

679 C. A. O. M. L. 117009. S. L. M.

Department of the Interior,
General Land Office,
Washington, D. C., April 17, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Statement "E," as transmitted to the Secretary of the Interior with the report of this office of May 3, 1900, relative to the adjustment of the second indemnity limits of the Northern Pacific Railroad grant, is a true and literal exemplification of the original on file in this office.

In Testimony Whereof I have hereunto subscribed my name and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

Seal U. S. General
Land Office

BINGER HERMANN,
Commissioner of General Land Office.

10-cent
I. R. Stamp.

[680] See Adjustment List A.

EX. D.
A. P. R.
J. F. S.

Statement E.

Northern Pacific Railroad, Minnesota
20 mile limits clear—Act July 2nd 1864.

Definite location July 6th, 1882, East of Duluth.
Lands lying East of Duluth

covered by enteries made after date of grant and prior to date of definite location.

Total area, 28,431.84

681

Northern Pacific Railroad, Minnesota.
Act July 2nd, 1864—Definite location July 6th 1882.
East of Duluth—20-mile limits clear.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
		N.	W.		4th Mer.
Lots 1, 2, 3 & n ½ nw ¼	1	51	12	172.49	P. C. 322, June 30th, '69.
Ne ¼	3	"	"	159.60	P. C. 321, June 30th, '69.
Ne ¼ nw	"	"	"	40	P. C. 491, July 22nd, '70.
Sw ¼ ne ¼	19	52	12	40	M. B. L. W. 112206, R. & R. 401, July 25th, '71.
Ne ¼ nw ¼ nw ¼ ne ¼	"	"	"	80	Cash entry 2192, Aug. 26th, '80.
W ½ nw ¼ n ½ sw ¼	"	"	"	160.47	M. B. L. W. 112184, R. & R. 402, July 25th, '71.
Se ¼ nw ¼	"	"	"	40	Cash entry 2147, Mch 5th, '80.
N ½ se ¼ sw ¼ se ¼	"	"	"	160	M. B. L. W. 112757, R. & R. 426, Feb. 5th, 72.
Se ¼ se ¼	"	"	"	40	M. B. L. W. 4943, R. & R. 425, Feb. 5th, '72.
Sw ¼ sw ¼	"	"	"	40.61	Cash entry 582, July 2nd, '71.
Sw ¼ nw ¼	27	"	"	40	M. B. L. W. 59821, R. & R. 435, June 26th, '72.
Ne ¼	29	"	"	160	M. B. L. W. 110911, R. & R. 423, Feb. 5th, '72.
Nw ¼	"	"	"	160	M. B. L W. 111620, R. & R. 424, Feb. 5th, '72.
Nw ¼	31	"	"	161.15	M. B. L. W. 110240, R. & R. 419, Jany. 24th, '72.
Se ¼	"	'	"	160	M. B. L. W. 24371, R. & R. 10, Jany. 14th, '72.
Ne ¼	33	"	"	160	M. B. L. W. 112713, R. & R. 418, Jany. 3rd, '72.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
		N.	W.		
Nw ¼	5	50	13	159.60	A. C. Scrip. 369, R. & R. 216 Apr. 29th, '67.
Sw ¼	"	"	"	160	A. C. Scrip. 370, R. & R. 217 Apr. 29th, '67.
Nw ¼ sw ¼	7	"	"	41.46	P. C. 236, Aug. 17th, '68.
S½ nw¼	1	51	13	80	P. C. 472, June 29th, '70.
Nw ¼ nw ¼	"	"	"	39.27	P. C. 473, June 29th, '70.
Ne ¼	3	"	"	160.17	M. B. L. W. 109610, R. & R. 360, May 24th, '70.
Nw ¼	"	"	"	159.89	M. B. L. W. 109676, R. & R. 361, May 24th, '70.
Se ¼	"	"	"	160	M. B. L. W. 119172, R. & R. 352, May 18th, '70.
Sw ¼	"	"	"	160	M. B. L. W. 108966, R. & R. 363, May 18th, '70.
Ne ¼	5	"	"	159.41	M. B. L. W. 109824, R. & R. 375, July 20th, '70.
Nw ¼	"	"	"	159.27	M. B. L. W. 109946, R. & R. 376
Se ¼	"	"	"	160	M. B. L. W. 109740, R. & R. 365, May 24th, '70.
Sw ¼	"	"	"	160	M. B. L. W. 109637, R. & R. 366, May 24th, '70.
All	7	"	"	645.32	P. C. 413, Mch. 25th, '70.
All	9	"	"	640	P. C. 415, Mch. 25th, '70.
Ne ¼ ne ¼	11	"	"	40	P. C. 474, June 29th, '70.
W ½ ne ¼	"	"	"	80	P. C. 481, July 20th, '70.
Se ¼ ne ¼, ne ¼ sw ¼	"	"	"	80	P. C. 479, July 13th, '70.
Se ¼	"	"	"	160	M. B. L. W. 102938, R. & R. 348, Mch. 30th, '70.
S ½ sw ¼	"	"	"	80	P. C. 402, Mch. 3rd, '70.
Nw ¼ nw ¼	13	"	"	40	P. C. 469, June 29th, '70.
Ne ¼	15	"	"	160	P. C. 408, Mch. 24th, '70.
S ½ nw ¼ ne ¼ nw ¼	"	"	"	120	M. B. L. W. 86970 R. & R. 350, Mch. 24th, '70.
Se ¼	"	"	"	160	P. C. 379, Feb. 8th, '70.
N ½ sw ¼ sw sw	"	"	"	120	M. B. L. W. 45452, R. & R. 349, Mch. 24th, '70.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼	17	51	13	160	Hd. 75 Jany. 15th, '70, Canceled July 20th, '70. D. S. 78 Sept. 11th & 17, '70. P. C. A. C. Scrip. 14, R. & R. 605, Nov. 30th, '72.
Nw ¼	"	"	"	160	Hd. 85 Feb. 8th, '70, Commuted by M. B. L. W. 111271, R. & R., 403.
Sw ¼	"	"	"	160	P. C. 336, July 10th, '69.
W ½ nw ¼ nw ¼ sw ¼	19	"	"	125.01	M. B. L. W. 43039, R. & R. 339 Aug. 26th, '69.
E ½ nw	"	"	"	80	P. C. 353 Aug. 26th, '69.
Ne ¼ sw ¼ sw ¼ e ½ sw ¼ se ¼	"	"	"	441.77	P. C. 389 Jany. 6th, '70.
N ½ ne ¼	21	"	"	80	Hd. 72 Jany. 11th, '70, Canceled July 31st, '77. Hd. 1406 Jany. 31st, '78, C. C. 7046 June 13th, '84.
Nw ¼	"	"	"	160	Hd. 71 July 11th, '70.
E ½ sw ¼	"	"	"	80	P. C. 320 June 23rd, '69.
W ½ sw ¼	"	"	"	80	P. C. 401 May 3rd, '70.
W ½ ne ¼	23	"	"	80	P. C. 338 July 9th, '69.
Nw	"	"	"	160	A. C. Scrip. 382, R. & R. 329 Apr. 29th, '67.
W ½ sw ¼	"	"	"	80	P. C. 270 Dec. 8th, '69.
Ne ¼	27	"	"	160	A. C. Scrip. 383 R. & R. 230 Apr. 29th, '67.
Nw ¼	"	"	"	160	A. C. Scrip 384, R. & R. 231 Apr. 29th, '67.
Ne ¼	29	"	"	160	A. C. Scrip. 389, R. & R. 236, Apr. 29th, '67.
Nw ¼	"	"	"	160	A. C. Scrip. 390, R. & R. 237, Apr. 29th, '67.
Se ¼	"	"	"	160	A. C. Scrip. 392, R. & R. 239, Apr. 29th, '67.
Sw ¼	"	"	"	160	A. C. Scrip. 391, R. & R. 238 Apr. 29th, '67.
Ne ¼	31	"	"	160	A. C. Scrip. 396, R. & R. 243 Apr. 29th, '67.
Nw ¼	"	"	"	164.53	A. C. Scrip. 397, R. & R. 244, Apr. 29th, '67.
Se ¼	"	"	"	160	A. C. Scrip. 399, R. & R. 246, Apr. 29th, '67.
Sw ¼	"	"	"	164.17	A. C. Scrip. 398, R. & R. 245, Apr. 29th, '67.
Se ¼ ne ¼	33	"	"	40	P. C. 255 Sept. 19th, '68.
W ½ ne ¼	"	"	"	80	P. C. 265 Oct. 14th, '68.
Sw ¼	"	"	"	160	P. C. Scrip. 403, R. & R. 250, Apr. 29th, '67.
Ne ¼ se ¼	15	52	13	40	Cash entry 3441 June 20th, '83.
S ½ ne ¼, se ¼	17	"	"	240	P. C. 699 Mch. 20th, '72.
W ½ nw ¼, W ½ sw ¼	19	"	"	155.20	P. C. 690 Mch. 16th, '72.

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PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼ & se ¼	19	52	13	320	P. C. 687 Mch 14th, '72.
E ½ nw ¼ e ½ sw ¼	"	"	"	160	P. C. 686 Mch. 14th, '72.
S ½ ne ¼	23	"	"	80	M. B. L. W. 112726, R. & R. 404 June 5th, '71.
Ne ¼	25	"	"	160	D. S. 103 Jany 21st & 23rd, '71. A. C. Scrip. 789, R. & R. 446, Apr. 29th, '71.
Se ¼	"	"	"	160	D. S. 104 Jany 23rd & 23rd, '71. P. C. 530 Mch. 23rd, '71.
Sw ¼	"	"	"	160	D. S. 101 July 11th & 28th, '71. P. C. 599 Sept 11th, '71.
Se ¼ se ¼	27	"	"	40	P. C. 2474 May 9th, '81.
Ne ¼	29	"	"	160	A. C. Scrip. 98 R. & R. 530 Feb. 27th, '72.
E ½ nw ¼	"	"	"	80	P. C. 675 Feb. 27th, '72.
Se ¼	"	"	"	160	M. B. L. W. 42278, R. & R. 428. Feb. 27th, '72, Canceled Sept 24th, '96. Hd. 10394 Dec. 18th, '96 C. C. 14408 Oct. 29th, '97.
Sw ¼	"	"	"	160	M. B. L. W. 112545, R. & R. 429, Feb. 27th, '72.
Ne ¼	31	"	"	160	A. C. Scrip. 409 R. & R. 478 Sept. 2nd, '71.
Nw ¼	"	"	"	160.16	A. C. Scrip. 410 R. & R. 479 Sept. 2nd, '71.
Se ¼	"	"	"	160	A. C. Scrip. 499, R. & R. 481 Sept. 2nd, '71.
Sw ¼	"	"	"	160.72	A. C. Scrip 498, R. & R. 480 Sept. 2nd, '71.
Ne ¼	33	"	"	160	M. B. L. W. 112476 R. & R. 431 Feb. 27th, '72.
E ½ nw ¼ n ½ sw ¼	"	"	"	160	M. B. L. W. 112636 R.& R. 432 Feb. 27th, '72.
N ½ ne ¼	35	"	"	80	D. S. 118 Apr. 7 & 8th, '71 Cash entry. 2365 Mch 21st, '81 Canceled Aug. 11th, '84. N. P. Selection Oct. 16th, '83 Canceled Mch 25th, '97. Hd 10672 Aug. 22nd, '97.
Nw ¼	"	"	"	160	Hd. 161 Jany 14th, '71, F. C. 803 Jany 6th, '76.
Se ¼	"	"	"	160	D. S. 97 Jany 5th & 6th, '71. D. S. 122 Aug. 25th & 25th, '71. Hd. 269 Mch. 28th, '72 Feb. 906 May 31st, '78.
Sw ¼	"	"	"	160	D. S. 96 Dec. 26th & 27th, '70. P. C. 708 Apr. 5th, '72.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
		N.	W.		
N ½ ne ¼	1	50	14	79.87	M. B. L. W. 61710, R. & R. 327, Aug. 10th, '68.
S ½ ne ¼ nw ¼ se ¼ sw ¼ ne ¼	"	"	"	160	M. B. L. W. 80530, R. & R. 318, June 3rd, '68.
Nw ¼	3	"	"	157.65	A. C. Scrip. 1141, R. & R. 337, Mch. 16th, '68.
Sw ¼	"	"	"	160	A. C. Scrip. 246, R. & R. 311, Apr. 29th, '67.
Ne ¼ ne ¼	5	"	"	40.01	M. B. L. W. 68980, R. & R. 336, Apr. 30th, '69.
Ne ¼	9	"	"	160	A. C. Scrip. 269, R. & R. 318, Apr. 29th, '67.
Ne ¼ nw ¼	"	"	"	40	A. C. Scrip, 270, R. & R. 319, Apr. 29th, '67.
Nw ¼ se ¼, e ½ se ¼	"	"	"	120	A. C. Scrip. 447, R. & R. 321 Apr. 29th, '67.
Ne ¼	11	"	"	160	A. C. Scrip. 374 R. & R. 221, Apr. 29th, '67.
Nw ¼	"	"	"	160	A. C. Scrip. 375 R. & R. 222 Apr. 29th, '67.
Se ¼	"	"	"	160	A. C. Scrip. 462 R. & R. 322, Apr. 29th, '67.
E ½ sw	"	"	"	80	P. C. 200 Apr. 29th, '67.
Ne ¼	1	51	14	160	M. B. L. W. 109694, R. & R. 369, May 24th, '70.
Nw ¼	"	"	"	160	M. B. L. W. 109718, R. & R. 370, May 24th, '70.
Se ¼	"	"	"	160	M. B. L. W. 109663 R. & R. 358, May 18th, '70.
Sw ¼	"	"	"	160	M. B. L. W. 109401 R. & R. 357, May 18th, '70.
Nw ¼	3	"	"	160	Hd. 90 Mch. 14th, '70 F. C. 804 Jany. 13th, '76.
Se ¼	"	"	"	160	D. S. 61 Aug. 31st, '66 & Aug. 5th, '69. P. C. 399 Aug. 1st, 70.
Nw ¼	5	"	"	159.97	Hd. 68 Dec. 28th, '69, Canceled Nov. 6th, '73. Hd. 541 Dec. 12th, 73, F. C. 1036, Sept. 18th, '80.
N ½ se ¼, sw ¼ ne ¼	"	"	"	120	Hd. 110 July 5th, '70, F. C. 862 June 30th, '74.
N ½ sw ¼, se ¼ sw ¼ sw ¼ se ¼	"	"	"	160	Hd. 108 July 5th. '70, Canceled Aug. 3rd, ... Hd. 564 July 12th, '74, F. C. 1043 Nov. 6th, '80.
Sw ¼ sw ¼	"	"	"	40	Hd. 109 July 5th, '70, F. C. 940 Oct. 8th, '78.
Sw ¼ sw ¼	7	"	"	39.83	P. C. 285 May 6th, '69.
Ne ¼	"	"	"	160	Hd. 51 July 10th, '69, F. C. 171 July 29th, '74.
E ½ nw ¼, sw ¼ nw nw ¼ sw ¼				159.61	Hd. 65 Nov. 26th, 69, F. C. 379 Jany. 7th, '75.
Nw ¼ nw ¼	"	"	"	39.80	Hd. 48 June 29th, '69, F. C. 654, Sept. 27th, '75.
W ½ se ¼, e ½ sw ¼	"	"	"	160	Hd. 43 May 18th, '69, F. C. 176 Aug. 1st, '74.
E ½ se ¼	"	"	"	80	P. C. 311 June 4th, '69.
Ne ¼	9	"	"	160	Hd. 84 July 5th, '70, C. C. 647 Jany 3rd, '72.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
		N.	W.		
Nw ¼	9	51	14	160	Hd. 82 Feb. 1st, '70, Canceled Nov. 6th, '73. Hd. 710 Aug. 12th, '74, F. C. 1037 Sept. 18th, '80.
Se ¼	"	"	"	160	Hd. 80 Jany 22nd, '70, F. C. 494 Apr. 7th, '75.
E ½ sw ¼	"	"	"	80	Hd. 112 July 9th, '70, F. C. 805 Jany 13th, '76.
W ½ sw ¼	"	"	"	80	P. C. 298 May 24th, '69.
Ne ¼ & se ¼	11	"	"	320	P. C. 404 Mch 7th, '70.
W ½ sw ¼	"	"	"	80	P. C. 300 May 24th, '69.
E ½ nw ¼ nw ¼ nw ¼	13	"	"	120	P. C. 306 May 25th, '69.
Ne ¼	"	"	"	160	P. C. 412 May 25th, '70.
Se ¼	"	"	"	160	A. C. Scrip. 453 May 18th, '71.
Sw ¼ nw ¼. nw ¼ sw ¼ e ½ sw ¼	"	"	"	160	P. C. 303 May 25th, '69.
Ne ¼	15	"	"	163	P. C. 292 May 15th, '69.
S ½ nw ¼	"	"	"	80	P. C. 407 Mch 24th, '70.
Sw ¼ & se ¼	"	"	"	320	P. C. 290 May 13th, '69.
N ½ ne ¼ ne ¼ nw ¼	17	"	"	120	P. C. 297 May 24th, '69.
Se ¼ ne ¼	"	"	"	40	P. C. 473 May 23rd, '70.
W ½ nw ¼ se ¼ nw sw ¼ ne ¼	"	"	"	160	Hd. 45, June 1st, '69 F. C. 153 Apr. 20th, '74.
Se ¼	"	"	"	160	Hd. 49 June 28th, '69 F. C. 666 Nov. 10th, '75.
Sw ¼	"	"	"	160	P. C. 313 June 4th, '69.
Lots H 2 & 3 & e ½ ne ¼	19	"	"	169.49	P. C. 309 June 4th, '69.
E ½ se ¼	"	"	"	80	P. C. 315 June 7th, '69.
Ne ¼	21	"	"	160	Hd. 46 June 28th, '69. Canceled July 31st, '74. Hd. 1415 Mch. 29th, '78 F. C. 1149 Jany 28th, '84.
Nw ¼	"	"	"	160	Hd. 53 July 20th, '69, F. C. 658 Sept. 27th, '75.
N ½ se ¼	"	"	"	80	P. C. 346 July 21st, '69.
S ½ se ¼	"	"	"	80	M. B. L. W. 103408, R. & R. 335 Feb. 12th, '69.
Sw ¼	"	"	"	160	P. C. 319 June 7th, '69.
Ne ¼	23	"	"	160	P. C. 287 May 12th, '69.
Nw ¼	"	"	"	160	P. C. 283, Apr. 3rd, '69.
Se ¼	"	"	"	160	P. C. 273 Dec. 8th, '69.
Sw ¼	"	"	"	160	P. C. 264 Oct. 1st, '68.

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PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼ & se ¼	25	51	14	320	P. C. 274 Dec. 8th, '68.
N ½ nw ¼	"	"	"	80	P. C. 275 Dec. 8th, 69.
Ne ¼	27	"	"	160	A. C. Scrip. 1165 R. & R. 364 Oct. 1st, '68.
E ½ se ¼	"	"	"	80	P. C. 234 Aug. 17th, '68.
W ½ se ¼	"	"	"	80	P. C. 260 Oct. 1st, '68.
Nw ¼ & sw	"	"	"	320	P. C. 277 Dec. 14th, '68.
Ne ¼ & nw ¼	29	"	"	320	P. C. 316 June 7th, '69.
Se ¼	"	"	"	160	P. C. 498 Sept. 12th, '70.
E ½ sw	"	"	"	80	P. C. 320 May 25th, '69.
Ne ¼	33	"	"	160	M. B. L. W. 103096, R. & R. 3220 Oct. 16th, '68.
Nw ¼	"	"	"	160	M. B. L. W. 103201 R. & R. 333, Oct. 16th, '68.
Se ¼	"	"	"	160	A. C. Scrip, 1162 R. & R. 361, Oct. 1st, 68.
Sw ¼	"	"	"	160	A. C. Scrip. 1161, R. & R. 360, Oct. 1st, 68.
Ne ¼	35	"	"	160	P. C. 250 Sept. 3rd, '68.
E ½ sw ¼ sw ¼ se ¼	"	"	"	120	P. C. 242 Aug. 24th, '68.
Nw ¼	"	"	"	160	P. C. 251 Sept. 3rd, '68.
N ½ se ¼, se ¼ se ¼	"	"	"	120	P. C. 252 Sept. 3rd, '68.
Sw ¼ sw ¼	"	"	"	40	P. C. 257 Oct. 1st, '68.
S ½ ne ¼	13	52	14	80	P. C. 641 Dec. 27th, '71.
S ½ nw ¼	"	"	"	80	P. C. 640 Dec. 27th, 71.
N ½ se ¼ n ½ sw ¼	"	"	"	160	P. C. 642 Dec. 27th, '71.
Lot 3	15	"	"	39.11	Hd. 352 Nov. 2nd, '72, F. C. 899 May 22nd, '78.
Se ¼ se ¼ & Lot	17	"	"	84.30	Hd. 336 Sept. 18th, '72, Canceled May 9th, '77. Hd. 1396 June 12th, '77, F. C. 1131 July 2nd, '83.
Ne ¼ nw ¼	19	"	"	40	P. C. 457 June 18th, '70.
Se ¼	"	"	"	160	Hd. 252 Jany. 15th, '72, F. C. 880 Dec. 10th, '77.
Ne ¼	21	"	"	160	Hd. 407 Feb. 13th, '73, F. C. 100 Jany. 20th, '80.
Nw ¼	"	"	"	160	Hd. 284 July 17th, '72, F. C. 949 Dec. 26th, '78.
Se ¼	"	"	"	160	Hd. 273 May 6th, '72, F. C. 951, Dec. 26th, '78.
Lots H 2 & n ½ sw ¼	"	"	"	158.69	Hd. 271 Apr. 15th, '72, F. C. 901 May 22nd, '78.
Nw ¼	23	"	"	160	Hd. 1754 Feb. 4th, '82, Canceled Mch. 29th, '88. Hd. 4040 May 11th, '88, Canceled Sept. 11th, '88. Hd. 4133 Sept. 22nd, '88, F. C. 1657 Sept. 7th, '94.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
		N.	W.		
W ½ ne ¼ se ¼ nw ¼	27	52	14	120	Hd. 102 Feb. 2nd, '75 Canceled June 3rd, '82. Hd. 1801 June 13th, '82, L. C. 1412 Jan. 4th, '89.
N ½ nw ¼	"	"	"	80	P. C. 1700 Feb. 16th, '74.
E ½ ne ¼	"	"	"	80	Hd. 1283 July 15th, '72 F. C. 931 Sept. 2nd, '78.
Sw ¼	"	"	"	160	Hd. 183 Mch 3rd, '71, F. C. 892 Jan. 29th, '78.
Ne ¼	29	"	"	160	Hd. 233 Oct. 16th, '71 Canceled Sept. 4th, '73. Hd. 499 Dec. 1st, '73 Canceled Sept. 8th, '81. Hd. 1672 Sept. 8th, '81, F. C. 1283 Mch 26th, '87.
Nw ¼ nw ¼	"	"	"	40	Hd. 228 Oct. 2nd, '71 Canceled Apr. 14th, '80. Hd. 1560 Apr. 29th, '80, F. C. 1260 Jany 20th, '87.
Se ¼	"	"	"	160	Hd. 163 Jany 18th, '71, F. C. 876 Nov. 28th, '77.
E ½ nw ¼ e ½ sw ¼	"	"	"	160	Hd. 227 Oct. 2nd, '71, F. C. 877 Nov. 30th, '77.
E ½ ne ¼ sw ¼ ne ¼	33	"	"	120	Hd. 654 Dec. 4th, '74, Canceled Feb. 23rd, '82. Hd. 1728 Dec. 8th, '81, F. C. 1269 Feb. 8th, '87.
Nw ¼	"	"	"	160	Hd. 151 Dec. 26th, '70 Canceled July 25th, '74. Hd. 652, Aug. 3rd, '74, F. C. 1085 Feb. 24th, '82.
Se ¼	"	"	"	160	Hd. 130 Nov. 4th, '70 F. C. 857 Nov. 30th, '76.
Ne ¼ ne ¼ or 1	35	"	"	32	P. C. 574 June 25th, '71.
W. ½ ne ¼, se ¼ ne ¼ ne ¼ se ¼	"	"	"	160	Hd. 124 Oct. 12th, '70 F. C. 661 Oct. 14th, '75.
Nw ¼	"	"	"	160	Hd. 128 Nov. 1st, '70 Canceled Nov. 6th, '73. Hd. 502 Dec. 1st, '73 F. C. 1019 Mch 24th, '80.
N ½ sw ¼ w ½ se ¼	"	"	"	160	Hd. 1515 Sept. 6th, '79, Canceled Jany 14th, '82. Hd. 1739 Jany 14th, '82 F. C. 1351 Dec. 8th, '87.
S ½ ne ¼ se ¼ nw	1	51	15	120	Hd. 57 Sept. 4th, 69 F. C. 154 Apr. 20th, '74.
Se ¼	"	"	"	160	Hd. 59 Sept. 21st, '69, Canceled Dec. 10th, '70. Hd. 166 Jany 21st, '71 F. C. 856 Nov. 29th, '76.
Ne ¼ sw ¼	"	"	"	40	Hd. 94 Mch 28th, '70 Canceled July 31st, '77. Hd. 1685 Oct. 10th, '81 Canceled Nov. 9th, '86. Hd. 2927 Nov. 9th, '86 F. C. 1601 Jany 23rd, '93.
Se ¼	23	"	"	160	A. C. Scrip. 448, R. & R. 295 Apr. 29th, '67.
Nw ¼ ne ¼	35	"	"	40	P. C. 454 June 18th, '70.

689 EXHIBIT No. 74:—Offered in evidence at page 351, this Record.

690 List of Losses within St. P. & D. 10 and 20 Mile Limits, outside of the Line of withdrawal or General Route of May 26, 1864. As Defined by the Hon. Commissioner of the General L. O.

1901.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Lot 5, sw ¼, sw ¼	3	50	19	87.52	L. S. & M. List No. 7, 6-24, 1878.
S ½ ne ¼ se ¼, s ½ sw ¼	9	"	"	320	"
S ½ ne ¼ se ¼	17	"	"	240	"
E ½ se ¼, sw ¼ se ¼	19	"	"	120	"
Nw ¼ nw ¼	29	"	"	40	"
W ½ nw ¼	31	"	"	68.09	"
Sw ¼ ne ¼, Lot 4, S ½ nw ¼ sw ¼ & nw ¼ se ¼	5	48	20	362.99	L. S. & M. List No. 2, 9-30-1872.
N ½, sw ¼—W ½ se ¼	7	"	"	604	"
Lot 2 & nw ¼—w ½ sw ¼	1	49	20	277	"
Sw ¼ se ¼—sw ¼ sw ¼	3	"	"	80	"
Se ¼ ne ¼, e ½ sw ¼ w ½ se ¼ se ¼ se ¼	9	"	"	240	"
S ½ ne ¼, w ½ se ¼	15	"	"	160	"
Ne ¼, n ½ se ¼, ne ¼ sw ¼	17	"	"	284.55	"
Lot 3, sw ¼ nw ¼	21	"	"	61.05	"
S ½ nw ¼, sw ¼ sw ¼, e ½ sw ¼, w ½ se ¼ ne ¼ se ¼	29	"	"	320	"
Lots 4, 5, 6, 7, 8, e ½ se ¼	31	"	"	288.71	"
Lot 5, sw ¼ nw ¼, n ½ sw ¼, sw ¼ sw ¼	33	"	"	199.65	"
Nw ¼ ne ¼, s ½ ne ¼, w ½, n ½ se ½ sw ¼ se ¼	3	47	21	543.86	"
All	5	"	"	611.36	"
N ½, sw ¼, w ½ se ¼, ne ¼ se ¼	7	"	"	652.16	"
All	9	"	"	640	"
S ½	17	"	"	320	"
All	19	"	"	685.66	"
W ½ nw ¼	21	"	"	80	"
W ½ ne ¼—w ½	29	"	"	400	"
E ½, s ½ nw ¼, nw ¼, sw ¼	31	"	"	638.16	"
All	1	48	21	632.16	L. S. & M List No. 4, 6-29-1874.
Lots 5, 6, & 7	3	"	"	79.85	"
S ½, ne ¼, e ½ sw ¼, sw ¼ sw ¼ se ¼	11	"	"	360	"
Ne ¼ ne ¼, sw ¼, s ½ se ¼	13	"	"	280	"

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Se ¼ ne ¼, n ½ ne ¼ n ½ nw ¼, s ½ se ¼	15	"	"	280	"
Se ¼ ne ¼, s ½ sw ¼, n ½ se ¼ se ¼ se ¼	21	"	"	240	"
Sw ¼, sw ¼ ne ¼	23	"	"	200	"
Sw ¼ nw ¼	25	"	"	40	"
E ½ ne ¼, sw ¼ nw ¼, s ½ sw ¼ sw ¼ se ¼	27	"	"	240	"
Sw ¼ sw ¼, e ½ se ¼, sw ¼ se ¼	29	"	"	160	"
F'w'd				10776.77	

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Bro't Fw'd				10776.77	
Ne ¼ ne ¼, sw ¼ se ¼	31	48	21	80	L. S. & M. List No. 4, 6-29-1874.
E ½ ne ¼, nw ¼ nw ¼, se ¼ nw ¼ sw ¼ s ½ se ¼	33	"	"	400	"
E ½ ne ¼, sw ¼ ne ¼, sw ¼ sw ¼ ne ¼ se ¼	25	49	21	200	"
Ne ¼ ne ¼ e ½ sw ¼	35	"	"	120	"
N ½	3	45	22	317.82	L. S. & M. List No. 12, 6-7-1873.
Ne ¼, n ½ nw ¼, sw ¼ nw ¼ sw ¼ sw ¼	5	"	"	319.52	"
Se ¼ ne ¼, se ¼ se ¼, nw ¼ sw ¼	7	"	"	80	"
Nw ¼ sw ¼	15	"	"	40	"
Sw ¼ nw ¼	17	"	"	40	"
Ne ¼ ne ¼—w ½ nw ¼	19	"	"	104.13	"
Nw ¼ ne ¼—nw ½ sw ¼	21	"	"	80	"
Sw ¼ nw ¼	29	"	"	40	"
Ne ¼, e ½ nw ¼, sw ½ nw ¼ sw ¼ sw ¼	31	"	"	306.14	"
Lots 1, 2, 3, sw ¼ ne ¼, s ½ nw ¼ sw ¼—w ½ se ¼	1	46	22	480.66	L. S. & M. List No. 4, 6-29-1874
E ½ ne ¼, nw ¼ ne ¼, sw ¼ nw ¼ sw ¼ sw ¼—ne ¼ se ¼	11	"	"	240	"
W ½, nw ¼, w ½ sw ¼	13	"	"	160	"
Ne ¼, se ¼ sw ¼, s ½ se ¼	21	"	"	280	"
W ½ nw ¼, se ¼ sw ¼—se ¼	23	"	"	280	"
Nw ¼ ne ¼, nw ¼ nw ¼, nw ¼ sw ¼ sw ¼ se ¼—e ½ se ¼	27	"	"	240	"
N ½ ne ¼, n ½ nw ¼, sw ½ nw ¼ s ½ sw ¼	29	"	"	280	"
Ne ¼ ne ¼, n ½ nw ¼—s ½	33	"	"	440	"
N ½ nw ¼, sw ¼ nw ¼, w ½ sw ¼	35	"	"	200	"
E ½ ne ¼, ne ¼ se ¼	1	47	22	118.64	L. S. & M. List No. 2, 9-30-1872.
Ne ¼, e ½ nw ¼—s ½	13	"	"	560	"
Ne ¼ ne ¼, s ½ ne ¼—se ¼	23	"	"	280	"
N ½, e ½ sw ¼, se ¼	25	"	"	560	"
N ½ se ¼,—sw ¼ se ¼	35	"	"	120	"
Sw ¼ sw ¼	13	45	23	40	L. S. & M. List No. 12, 6-7-1873.
W ½ sw ¼, e ½ se ¼	25	"	"	160	"
Se ¼	35	"	"	160	"
Fw'd				17503.68	

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PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Bro't Fw'd				17503.68	
S ½ nw ¼, n ½ sw ¼	7	45	15	113.49	L. S. & M. List No. 5, 1-23-1869.
W ½	7	46	15	268.89	L. S. & M. List No. 2, 3-25-1868.
W ½	19	"	"	264.81	"
E ½ of W ½, nw ¼ nw ¼,—sw ¼ sw ¼	31	"	"	207.47	"
W ½	31	47	15	270.08	"
Sw ¼ ne ¼, e ½ sw ¼, sw ¼ sw ¼	1	44	16	160	L. S. & M. List No. 5, 1-23-1869.
Ne ¼, ne ½ nw ¼, se ¼ se ¼	3	"	"	279.26	"
Sw ¼ ne ¼, ne ¼ sw ¼, w ½ se ¼	5	"	"	160	"
se ¼ ne ¼, nw ¼	5	"	"	201.09	"
Nw ¼ ne ¼	7	"	"	40	"
E ½ ne ¼, sw ¼ ne ¼, ne ½ nw ¼	11	"	"	160	"
E ½ ne ¼, sw ¼, ne ¼, se ¼ nw ¼ ne ¼ sw ¼ w ½ se ¼	1	45	16	280.14	"
Sw ¼ ne ¼, W ½—se ¼	3	"	"	521.20	"
W ½ ne ¼, sw ¼ ne ¼, ne ¼ nw ¼, s ½ nw ¼ n ½ of s ½, sw ¼ sw ¼, se ¼ se ¼	5	"	"	478.66	"
Ne ¼ ne ¼, sw ¼ ne ¼, nw ¼ nw ¼, s ½ nw ¼ sw ¼ —nw ½ se ¼	7	"	"	381.37	"
W ½ ne ¼, sw ¼ nw ¼, w ½ of s ½, se ¼ sw ¼—se ¼ se ¼	9	"	"	360	"
Se ¼ ne ¼, w ½ ne ¼, e ½ of w ½—w ½ se ¼	11	"	"	360	"
Se ¼ ne ¼, w ½ ne ¼, nw ¼ nw ¼	13	"	"	160	"
Sw ¼ sw ¼, w ½ se ¼	13	"	"	120	"
E ½ ne ¼, sw ¼ ne ¼, e ½ nw ¼, sw ¼ nw ¼ w ½ of s ½, sw ¼ sw ¼, sw ¼ se¼	15	"	"	480	"
S ½ of n ½, ne ¼ nw ¼, e ½ sw ¼, n ½ se ¼	17	"	"	360	"
Ne ¼, s ½ nw ¼, ne ¼ sw ¼, w ½ sw ½ nw ¼ se ¼	19	"	"	380.88	"
Ne ¼, s ½ nw ¼, sw ¼, w ½ se ¼	21	"	"	480	"
Nw ¼ ne ¼, w ½ nw ¼	23	"	"	120	"
W ½ ne ¼, ne ¼ nw ¼, nw ¼ se ¼	25	"	"	160	"
Se ¼ nw ¼, e ½ sw ¼, sw ¼ sw ¼	27	"	"	160	"

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
S ½ ne ¼, w ½ nw ¼, se ¼ nw ¼ s ½	29	“	“	520	“
S ½ ne ¼, ne ¼ sw ¼, nw ¼ se ¼	31	“	“	160	“
Nw ¼	31	“	“	147.40	“
Ne ¼ ne ¼, e ½ of w ½, sw ¼ sw ¼ nw ¼ se ¼, se ¼ se ¼	33	“	“	320	“
Ne ¼ ne ¼, ne ¼ nw ¼, s ½ of n ½, ne ¼ sw ¼, s ½ sw ¼, nw ¼ se ¼	35	“	“	400	“
All	1	46	16	640.97	L. S. & M. List No. 2, 3-2 5-1868.
Ne ¼	11	“	“	160	“
W ½ se ¼	11	“	“	480	“
E ½, e ½ of w ½, nw ¼ nw ¼, sw ¼ sw ¼	13	“	“	560	“
All	15	“	“	640	“
Fw'd				28459.39	

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Bro't Fw'd				28459.39	
W ½ se ¼	19	46	16	80	L. S. & M. List No. 2 3-25-1863
All	21	"	"	640	"
All	23	"	"	640	"
All	25	"	"	640	"
All	27	"	"	640	"
All	29	"	"	640	"
All	31	"	"	595.51	"
W ½, s ½ of s ½, ne ¼ sw ¼, ne ¼ se ¼	33	"	"	560	"
W ½, sw ¼, w ½ se ¼	35	"	"	560	"
S ½ ne ¼, e ½ nw ¼, w ½ of s ½	1	44	17	320.70	L. S. & M. List No. 5, 1-16-1869
W ½ of n ½	3	"	"	164.64	"
W ½, w ½ of s ½, s ½ se ¼	1	45	17	542.08	L. S. & M. List No. 7. 12-21-1870
S ½ se ¼	3	"	"	80	"
Ne ¼, nw ¼ nw ¼, w ½ sw ¼, w ½ se ¼	11	"	"	360	"
E ½ ne ¼, nw ¼ nw ¼, e ½ sw ¼, sw ¼ sw ¼, se ¼	13	"	"	400	"
E ½ ne ¼, s ½	15	"	"	400	"
Nw ¼ ne ¼, nw ¼, w ½ sw ¼, sw ¼ sw ¼	21	"	"	320	"
Ne ¼ ne ¼, sw ¼ ne ¼, s ½ sw ¼	23	"	"	160	"
N ½, sw ¼, n ½ se ¼	25	"	"	560	"
E ½ ne ¼	27	"	"	80	"
Se ¼ ne ¼, e ½ se ¼	29	"	"	120	"
Nw ¼ ne ¼, s ½ ne ¼, nw ¼ w ½ of s ½ se ¼ se ¼	33	"	"	240	"
Nw ¼ ne ¼, ne ¼ nw ¼, w ½ of n ½	35				
S ½	25	46	17	320	L. S. & M. List No. 2. 3-25-1868
E ½ ne ¼, se ¼	35	"	"	225.75	
Total				38228.07	

694 EXHIBIT No. 75:—Offered in evidence at page 352, this record.

"F" T. and S. Entry No. 14531.

Department of the Interior,
General Land Office,
Washington, D. C., February 26, 1901.

Register and Receiver,
Duluth, Minnesota.

Sirs: The SE 1-4. NW. 1-4. of Sec. 5, T. 53 N. R., 12 W., Minnesota, is within the 30 mile indemnity limits of the grant to
695 the Northern Pacific Railroad Company, and was selected for its benefit October 17, 1883, List No. 10. This list did not specify the lost lands as a basis for the said selection; and on June 19, 1891, the company filed rearranged list No. 10, wherein it designated an equal quantity of lost land as a basis for the tract in question, in section 31, T. 52 N. R. 18 W., within its primary limits, which had been patented as swamp October 22, 1880.

The selected tract is east of the terminal of the Company's grant as fixed at Duluth by departmental decision of August 27, 1896 (23 L. D., 204); and said list No. 10 was canceled thereunder by this office April 17, 1897; and the land held to be subject to entry.

Under that decision William J. Pierce made Timber and Stone entry No. 14531 for the said tract January 24, 1898, paying for the land with S. G. scrip No. 785 B. Louisiana.

The United States Supreme Court, on April 16, 1900, decided in the case of the United States vs. The Northern Pacific Railroad Company (177 U. S., 435), that the company's grant extended eastward to Ashland, Wisconsin, thus bringing the land in question within its grant Consequently, the cancellation of the company's list No. 10 was rescinded by Office letter "F" of July 12, 1900, and its selection of the land was restored to the records of this office.

Under the ruling of the court referred to, the claim of the Northern Pacific Railroad Company appears to be superior to that of William J. Pierce. The attorney for Pierce, however, contends in a paper filed by him in the case, that the claim of the company to this land arising from its selection is not a valid one for the following reasons:

First. That it nowhere appears in the certificates or affidavits attached to said List No. 10, as required by Circular of

August 4, 1885 (4 L. D., 90) that the specific losses for
696 which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any measure.

Second. That it nowhere appears in said selection list that the grant to this company in the State of Minnesota, in which the selection is sought to be made within the first indemnity belt cannot be satisfied without selecting this land. That as a matter of fact there are lands still vacant within the first indemnity belt west of the land selected; as will appear from an examination of Exhibit A hereto attached.

Third. The circular of August 4, 1885 (4 L. D., 90) required that where deficiencies existed for which indemnity is allowed by law, the lieu selections must be made from vacant unappropriated land within proper sections, and limits, nearest the granted sections in which the loss occurred; and that the provision of said circular has been entirely disregarded in making the selections of lieu lands in List No. 10.

The purport of the foregoing allegations appears to be that the company did not make its selection nearest the granted section in which the loss occurred, and as evidence of that allegation, said attorney submits a list of vacant and unappropriated lands in odd-numbered sections within the first indemnity limits, marked Exhibit A, lying much nearer the lost land than the tract selected. And contends also that there is no evidence in the said list of selections that the tract designated as a basis therefor has not heretofore been indemnified, or used as a basis for other selections.

In answer to these contentions it is only necessary to state that a careful examination of the records shows that the tracts alleged to have been vacant and unappropriated at the date of selection, were at that time either disposed of, or were in controversy before this office; and were not subject
697 to selection as indemnity; and the records further show that the tract designated as lost and used as a basis in the case at bar, has not been used as a basis for any other selection.

In view of these facts the objections to the validity of the company's selection are without force or effect.

In appears that William J. Pierce had no claim for this land January 1, 1898, either by settlement, entry or purchase; that his entry was made subsequently to that date; consequently his claim is not within the purview of the act of July

1, 1898 (30 Stat., 597) and cannot be adjudicated under its provisions. (29 L. D., 242.) It must, therefore, be decided upon its merits.

Under the ruling of the Supreme Court of the United States, (177 U. S., 435) fixing the Terminal of the Northern Pacific company's grant at Ashland, Wisconsin, the action of the Interior Department fixing said terminal at Duluth, and canceling the company's selections and holding the land embraced therein to be subject to entry under the public land laws, was overruled.

The company's claim to the said land was, therefore, a valid one, and is superior to that of William J. Pierce, whose entry therefor is held for cancellation, subject to appeal. You will so advise him. The resident attorneys of the company will be notified hereof by this office.

Very respectfully,
BINGER HERMAN,
Commissioner.

698 EXHIBIT No. 76:—Offered in evidence at page 232, this record.

Railroad Record. B Loss.

Department of the Interior,
General Land Office,
Nov. 2, 1866.

Register and Receiver,
Duluth, Minn.

Gentlemen: Herewith is a diagram, showing the line of route, as definitely located, of the Lake Superior and Mississippi Railroad, with the ten, twenty and on the west side the thirty mile limits indicated thereon. Acts May 5, 1864 and July 13, 1866.

The odd sections within all three of these limits will be withdrawn from sale or location, pre-emption or homestead; except in so far as valid pre-emption claims may have accrued to the same prior to the withdrawal of May 26, 1864, within the limits therein designated, and prior to the receipt of this order outside of the limits fixed in that withdrawal.

As the Act 1864 reserves from the grant any and all lands theretofore reserved for the purpose of aiding in any object of internal improvement or for any other purpose whatsoever, no reserved lands are subject to the operation of the grant.

You will mark the line of route with the several limits on the township plats, in pencil, and you will report the the fact of its having been done.

The Railroad Company will be required, first, to make their selections from the 10 and 20 mile limits— [—] it is then found that a deficiency exists, the same can be made up by selections from the 30 mile limit.

699 This order will take effect from the date of the receipt at your office and you will advise me of the precise time it may be received by you.

Very respectfully,
Your obdt. servant,
JOS. S. WILSON,
Commissioner.

The even sections within the 10 mile limits are increased in price to 2.50 per acre, and will be subject at that rate to settlement and entry under the pre-emption and homestead laws: Ant no such sections can be entered at private sale until they shall have first been offered at public auction.

JOS. S. WILSON,
Commissioner.

Recd. Nov. 17/66, at 4 o'clock p. m.

EXHIBIT No. 77:—Offered in evidence at page 352, this Record:

F Vol. 6, p. 345. R. R. Record.
N. K. U.
M. B. R.

Department of the Interior, General Land Office,
Washington, D. C., May 20, 1872.

Register and Receiver,
Duluth, Minn.

Gentlemen: Information has reached this office to the effect that you are allowing parties claiming by preemption, who settled on the odd secs. of land within the limits of the
700 withdrawal for the benefit of the L. S. and Miss. R. R. Co. to file their Declaratory Statements upon the plat of survey being returned to your office.

Upon examination of your records you will find that the first withdrawal for the benefit of said road under the instructions of this office dated May 26, 1864, withdrew the odd and even sections within the granted limits of said road and extended to the unsurveyed as well as the surveyed lands.

Upon the definite location of the road this office under date Nov. 2d, 1866, directed the withdrawal of the odd sections within the ten, twenty and on the west side the thirty mile limits from sale or location, preemption or homestead except insofar as valid premption claims had accured to the same prior to the withdrawal of May 26, 1864, within the limits therein designated and prior to the receipt of this order of Nov. 2d, 1866, outside of the limits of the withdrawal of May 26, 1864 and within that of Nov. 2d, 1866. At the same time the even sections within the granted limits were increased to $2.50 per acre under the recent rulings of the Department the grant to the Lake Superior and Miss. R. R. Co. became effective upon the definite location of the road which was the 18 Sept. 1866 when the Governor certified to the map.

You will therefore refuse all claims to odd secs. within the limits of said withdrawal of Nov. 2, 1866, based upon settlement made subsequent to Sept. 18, 1866.

Very respectfully,
WILLIS DRUMMOND,
Commissioner,

701

Defendant's Exhibits.

WASHINGTON EXHIBIT A.

Offered in evidence at page 288, this record.

702 1st Indemnity South of N. P. Road and East of the Miss. River—4th P. M.
(Examinations made between Jan'y 24th [—] Feb. 23d, 1901.)

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Nw of se	33	45	22	40.00	Vacant since Feby 20/73
E ½ of ne ¼	1	42	25	80.00	" until July 6/98
Nw of ne	1	42	25	40.00	" " Apr. 20/92
Se of nw	1	42	25	40.00	" " " " "
N ½ of sw & sw of nw	1	42	25	120.00	" " Nov. 16/91
S ½ of sw & sw of se	1	42	25	120.00	" " " " "
Nw of nw or lot 4	1	42	25	40.00	Never disposed of
Lot 6	3	42	25	11.35	Vacant until 1891
Lots 2, 3, 4 & 5	3	42	25	130.09	" " July 3/94
Lot 1 & w ½ of sw	3	42	25	91.35	" " " 3/94
Lot 1	5	42	25	27.10	" " Oct. 30/ 91
Lot 3	7	42	25	38.10	" " Mch. 19/94
Lots 1 & 2	7	42	25	82.75	" " Jany 8/92
N ½ of ne & se of ne	9	42	25	120.00	" " Dec. 14/96
Lot 2	9	42	25	46.75	" " Oct. 30/91
Sw of se	9	42	25	40.00	" " July 2/98
Ne of se	9	42	25	40.00	" " Mch. 14/97
Sw ½	9	42	25	160.00	" " Nov. 5/91
N ½ of ne	11	42	25	80.00	" " July 1/98
Se of ne	11	42	25	40.00	" " Sept. 14/97
Lot 1, ne of sw & s ½ of nw	11	42	25	156.40	" " Nov. 16/91
W ½ of sw	11	42	25	80.00	" " Mch. 21/92
Se of sw	11	42	25	40.00	" " Sept. 26/91 and is now vacant Jan. 24/01
N ½ of nw	13	42	25	80.00	Vacant until Nov. 4/91
S ½ of nw	13	42	25	80.00	" " July 2/98
Sw of sw & n ½ of sw	13	42	25	120.00	" " Nov. 10/91
Se of sw	13	42	25	40.00	Vacant—never disposed of
Ne ¼	15	42	25	160.00	" until July 28/98
E ½ of nw	15	42	25	80.00	" " Apr. 14/92
W ½ of nw	15	42	25	80.00	" " Nov. 6/95
N ½ of se & ne of sw	15	42	25	120.00	" " Sept. 21/91
W ½ of sw	15	42	25	80.00	" " July 2/98
S ½ of se & se of sw	15	42	25	120.00	" " Dec. 15/91
Lot 4 & sw of sw	17	42	25	85.15	" " Jany 20/92
N ½ of se, sw of se & se of sw	17	42	25	160.00	" " Dec. 11/91
Lot 5	17	42	25	5.35	" " July 2/98
				2874.39	

703

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Ne of ne	19	42	25	40.00	Vacant until Nov. 3/91
Nw of ne	21	42	25	40.00	" " July 5/98
N ½ of nw	21	42	25	80.00	" " Mch. 17/92
S ½ of nw	21	42	25	80.00	" " May 4/92
Nw of sw	21	42	25	40.00	" " Nov. 6/91
Sw of nw	23	42	25	40.00	" " Nov. 4/91
Lot 5	17	42	26	22.80	Never disposed of up to Jany 25/01
Nw of ne	25	42	26	40.00	Vacant from Feb'y 21/91 to Jan. 26/01
Se of sw & sw of se	27	42	27	80.00	Vacant Jany 1/88
E ½ of sw & n ½ se & sw of se	27	42	27	200.00	" Jany 1/88
S ½ sw, sw of se, ne of se & se ne	29	42	27	200.00	" " "
E ½ of ne, sw ne & se of nw	31	42	27	160.00	Vacant up to Nov. 25/91
Se of ne & e ½ of se	33	40	32	120.00	Never been disposed of up to Jany 31/01, still the St. P. & N. P. has taken lien for all of Sec. 33,40,32 in Secs. 1 & 3-129-32 list 2 etc.

1st Indemnity West of Miss. River and South of N. P. R. R. 5th P. M.

Lot 2 (island in River	33	130	29	36.50	Vacant up to Feby 1/91
Lot 5 " " "	5	129	29	7.50	" " " " "
W ½ of sw	3	129	34	80.00	" Since 1876
E ½ of sw	17	129	34	80.00	" " 1875
E ½ of ne	11	129	35	80.00	" " Oct. 21/95
Lots 1 & 2 & s ½ of ne	1	130	36	163.20	"
Ne ¼, nw ¼ & se ¼	7	130	36	480.00	Contest pending Oct. 20th, 1900
All of	11	130	36	640.00	" "
N ½ of nw	13	129	36	80.00	Vacant
Lots 5 & 6	23	130	37	83.50	"
Nw of se	5	131	40	40.00	" claim of N. P. rejected
Lot 2	7	131	40	30.37	" Appln. of N. P. select pending
Lot 3	15	131	40	36.75	" Since Nov. 20/91
E ½ of se	15	131	40	80.00	" up to Mch. 10/93
				3060.62	

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Sw ¼	15	131	37	160.00	Vacant since July 26/80 Selected by St. P. & P. R. R. tract relqd. on above date
Ne of ne	21	131	37	40.00	Vacant
Lot 4	23	131	37	9.55	" Oct. 23/96
Ne ½, n ½ nw ¼ & se nw	31	131	38	280.00	" since July 26/80
Lots 4, 5, 6 & 7 & se se	15	132	39	223.95	"
Nw ¼	27	132	39	160.00	" since July 26/80 relqd. by Gov. St. Vin. Ex. St. P. & P. R. R.
Nw ne	27	132	39	40.00	Vacant until May 19/96
Ne sw	23	132	40	40.00	" contest pending in F
W ½ sw	7	133	40	51.99	" " " "
Sw ne & Lot 1	27	133	40	82.14	" " " "
S ½ nw	3	130	39	80.00	" " " "
N ½ sw ¼	9	131	39	80.00	"
Lot 7	29	134	41	38.50	" Since Nov. 2/1900
Lots 5, 11 & 12	31	134	41	112.88	" " Sept. 11, 1900
Ne ¼, w ½ nw ¼ & se nw	27	134	42	240.00	" " " 1, 1897
Lots 5, 6 & 7, 13 & 4	31	134	42	146.58	" from Mch. 6/93 to Sept. 21/97
N ½ ne	33	134	42	80.00	Vacant from Sept. 1/97
Lots 6 & 7 & s ½ sw	35	134	42	142.45	" since Sept. 1/97
S ½ nw	11	133	42	80.00	" " Aug. 24, '97
Sw se & Lot 1	11	133	42	119.35	" " Oct. 30, 1900.
N ½ nw	27	133	42	80.00	" " Feb. 29/84
Se nw	27	133	42	40.00	" up to Oct. 20/96
S ½ ne	27	133	42	80.00	" " " Sept. 29/91
Lot 3	13	132	42	22.55	"
Ne se	15	136	44	40.00	" since Sept. 1/97
Nw ne & ne nw	35	136	44	80.00	was relqd. by Gov. deed No. 3 Nov. 9/87 to Ole Olson entered by Ambers June 17/91
Se nw & e ½ sw	19	136	45	120.00	Vacant
E ½ nw & e ½ sw	31	136	45	160.00	"
Sw nw	15	135	44	40.00	" Since Aug. 24/97
S ½ se ¼	27	135	44	80.00	Relqd. by the N. P. never selected by any road, nor has it ever been disposed of
				2955.94	

705

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
E ½ sw & Lots 3 & 4	9	134	43	118.15	Vacant until July 30/88
Sw nw & nw sw	5	134	46	80.00	"
Sw nw	23	135	43	40.00	Selected by St. V. ext. Dec. 2/73
N ½ se, ne sw & Lot 1	29	135	43	147.50	Relqd. by Gov. July 20/80
				425 65	

1st page	2874.39
2 " do	3060.62
3 " do	2955.94
4 " do	425.65
	10,316.60
North	3,912.35
	24,228.95 acres

706

WASHINGTON EXHIBIT B.

Offered in evidence at page 290, this record.

707

"B"

2nd indemnity South of N. P. road and East of Miss. River.

(Examinations made between Jany 24th & Feby 23rd 1901)

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Lot 7	3	43	20	33.35	Vacant
Se of sw	23	42	24	40.00	"
Sw of sw	21	42	25	40.00	" until Nov. 6/91
N ½ of sw	23	42	25	80.00	" " Nov. 4/91
Se of ne	25	42	25	40.00	" " Oct. 7/95
N ½ of nw	25	42	25	80.00	" " Dec. 15/91
S ½ of nw, sw of ne & nw of se	25	42	25	160.00	" " Feb. 20/94
S ½ of sw & s ½ of se	25	42	25	160.00	" from Sept. 22/86 to July 2/98
Ne of sw	25	42	25	40.00	" from Sept. 22/86 to Oct. 27/99
Nw of nw	27	42	25	40.00	" from Sept. 22/86 to Feb. 16/92
Ne of nw	27	42	25	40.00	" from Sept. 22/98 to Nov. 20/91
Nw of ne	27	42	25	40.00	" from Sept. 22/86 to Nov. 20/91
Ne of ne	27	42	25	40.00	" from Sept. 22/86
Ne of ne	29	42	25	40.00	" " Sept. 22/86 to Sept. 20/98
S ½ of ne, nw of se & se of nw	29	42	25	160.00	" from Sept. 22/86 to Apr. 28/92
Sw of nw	29	42	25	40.00	" until Oct. 21/91
W ½ of sw & se of sw	29	42	25	40.00	" " Dec. 17/91
Sw of se	29	42	25	40.00	" from Sept. 22/86 to Dec. 17/91
Lot 4, se of sw & sw of se	31	42	25	129.17	" until Aug. 3/91
Sw of se	33	42	25	40.00	" from Sept. 22/86 to Jan. 25/01
Sw ¼	33	42	25	160.00	" until July 15/91
W ½ of ne & e ½ nw	33	42	25	160.00	" " Feby. 6/91
Nw of ne	35	42	25	40.00	" from Sept. 22 to Nov. 20/91
E ½ of ne & e ½ of se	35	42	25	160.00	" from Jan. 1888 to Apr. 9/92
Nw of sw	35	42	25	40.00	" until Mch. 28/91
Se of se	25	42	26	40.00	" from Apr. 22/86 to Jan. 26/01
Se of ne	21	41	26	40.00	" Jan. 26/01 never entered
Sw of se	31	40	27	40.00	" " " " "
Sw of nw	5	39	27	40.00	" " " " "
Sw of nw	5	39	28	40.00	" " " " "
S ½ of ne, ne of ne n ½ of s ½, se of sw & nw ¼	25	40	29	480.00	Vacant from June 30/75
708					
S ½ se & s ½ sw	5	127	33	160.00	Vacant Contest pending in "F"
W ½ se	13	127	33	80.00	Vacant since 1872 Contest pending in "F" Nov. 11/97

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Sw ¼	15	127	33	160.00	Vacant since 1872, Contest pending in "F" Sept. 8/97
Lot 3, nw se & s ½ se	19	127	33	154.23	Vacant
Lots 3 & 4	25	127	33	58.84	" since Aug 7/97 application to enter pending.
N ½ ne	13	128	34	80.00	Vacant since Oct. 20/92
S ½ ne	15	128	34	80.00	" from Nov. 1/73 to June 11/90
S ½ se & nw se	25	128	34	120.00	" from Nov. 1/65
Sw ¼	31	128	34	163.80	" " 1878 to Nov. 13/89
Sw sw	27	129	35	40.00	"
Se sw	31	129	35	40.00	" Appln. to enter pending.
Nw ¼	3	128	35	130.44	" from Mch. 24/74 to Oct. 19/89
n					
Se sw	31	128	35	40.00	" since Oct. 27/99
Se ne & ne se	23	129	36	80.00	"
Se sw	7	129	37	40.00	The St. P. M. & N. selected it Oct. 28/79. Contest instituted by N. P. Claim of St. P. & M. Canceld. May 20/97. Land still vacant.
N ½ se & ne sw	21	131	40	120.00	Vacant Hd. appln. pending Oct. 19, 1900.
Se ne	35	129	38	40	Selected by St. P. & M. Oct. 28/79 canceld. Aug. 7/97. Vacant since.
Ne sw	11	129	39	40	Vacant.
W ½ ne	7	130	39	80.00	" from Dec. 13/90 to Dec. 2/96
E ½ sw. se nw & Lot 3	7	130	39	155.68	" from July 20/71 to Apr. 11/95
E ½ se & Lots 2 & 3	19	130	39	152.40	" until Dec. 17/92
W ½ nw	25	130	39	80.00	" since Dec. 30/75
Lot 5	33	130	39	13.90	" from Jan. 22/72 to Dec. 19/89
Lot 2	13	130	41	39.12	" until Oct. 30/88
Ne ¼	1	130	40	160.00	" " July 7/96
N ½ sw & se sw	13	130	41	120.00	Vacant until Nov. 14/89
Lot 1	25	130	40	49.10	" from May 23/68 to Mch. 12/80 & from Aug. 7/97 to May 16, 1900.
Ne ¼	1	129	41	160.03	Vacant until July 1/95
Lot 3	17	131	42	35.44	" since Feb. 10/87

709 WASHINGTON EXHIBIT C.

Offered in evidence at page 291, this record.

710 "C"

1st Indemnity North of N. P. Road 4th P. M.

(Examinations made between Feb. 23rd and Mch. 8th, 1901.)

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Lot 2	7	52	20	49.95	Vacant
" 4	7	52	20	50.15	" up to Sept. 11, 1900
Sw sw	13	53	20	40.00	Selected as swp. Sept. 13/75, rejected Sept. 4/96 Vacant since.
W ½ sw or lots 3 & 4	19	53	20	57.23	Selected as swp. as above rejected Nov. 6/97 Vacant since.
Sw nw & nw sw	27	53	20	80.00	Selected as swp. as above swamp claim to sw nw rejected Nov. 20/94 Vacant since. Swamp claim to nw sw rejected Sept. 4/96, Vacant since.
Ne nw & sw nw	31	53	20	74.11	Selected as swp. as above—swp. claim rejected Sept. 4/96, Vacant since.
Ne ne	33	53	20	40.00	Selected as swp. as above—swp. claim rejected Sept. 20/94—Vacant since.
Se ne & nw se	17	52	21	80.00	Selected as swp. Sept. 13/75 swamp claim to nw se rejected Sept. 4/96 Vacant since. Swamp claim to se ne rejected Nov. 6/97 Vacant since.
E ½ ne	9	53	21	80.00	Selected as swp. as above rejected Nov. 6/97 swp. claim. Vacant since.
Nw nw, sw sw, ne ne & se nw	11	53	21	160.00	Selected as swp. as above swp. claim rejected Nov. 6/97. Vacant since.
Nw ne	13	53	21	40.00	Same as above. Vacant.
Sw ¼ & w ½ se	17	53	21	240.00	" " " "
nw sw	21	53	21	40	" " " "
Lot 4	17	52	23	29.50	" " " "
Se se	27	52	23	40.00	" " " "
Se se	33	52	23	40.00	" " " "
Sw se	35	52	23	40.00	" " " "
Lot 1	21	53	23	38.75	" " " "
All of	3	51	25	683.71	Claimed as swamp Nov. 21/76 no selections nor entries of record.
All of	5	51	25	673.04	Same as above.
All of	7	51	25	649.88	" " "
All of	9	51	25	640.00	" " "
All of	11	51	25	640.00	
				4506.31	

711

REMARKS.	PARTS OF SECTIONS.	S.	T.	R.	AREA.
Ne ne, w ½ ne, nw ¼ s ½ se, nw se & sw ¼	13	51	25	560.00	Claimed as swamp Nov. 21/76 No selections nor entries of record.
All of	15	51	25	640.00	Same as above.
All of	17	51	25	640.00	" " "
Lot 4, se sw & e ½	19	51	25	400.84	" " "
All of	21	51	25	640.00	" " "
All of	23	51	25	640.00	" " "
Ne ½, ne nw, s ½ nw, n ½ se, se se, n ½ sw & sw sw	1	52	25	389.87	Same as above.
W ½ sw, se sw	3	52	25	120.00	" " "
Se sw	7	52	25	40.00	" " "
Ne ne	11	52	25	40.00	" " "
S ½ se, nw se, sw ¼ & n ½	13	52	25	600.00	" " "
W ½ of	15	52	25	320.00	" " "
S ½, se, nw se & sw ¼	17	52	25	280.00	" " "
S ½ sw or lot 4 & se sw	19	52	25	87.07	" " "
S ½ se	21	52	25	80.00	" " "
E ½ ne, nw ne, w ½ nw, sw ¼ & ne se	23	52	25	400.00	Same as above.
E ½, sw ¼ & sw nw	25	52	25	520.00	" " "
All of	27	52	25	640.00	" " "
All of	29	52	25	640.00	" " "
Ne, nw ¼ e ½ se, sw se & n ½ sw	31	52	25	524.87	Same as above.
S ½ nw, s ½ ne & ne sw	33	52	25	20.00	" " "
All of	35	52	25	640.00	" " "
E ½ se	35	53	25	80.00	" " "
Nw se	7	51	26	40.00	" " "
Nw sw	21	51	26	40.00	Vacant
Ne ne	27	51	27	40.00	" since Apr. 12/76
			5th P. M.		
Lot 1	27	139	26	1.14	Vacant
				9263.79	

712

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Nw se & se sw	11	140	27	80.00	Selected by N. P. Oct. 17/83. Relinquished Apr. 28/93. Vacant since.
Lots 3 & 9	23	140	27	62.25	Same as above.
				142.25	

C { 1 Page 4506.31
2nd " 9263.79
3rd " 142.25 }

13,912.35

N ½ nw, sw nw & nw sw	21	144	44	160.00	Vacant until Jan. 5/95

713 WASHINGTON EXHIBIT D.

Offered in evidence at page 291, this record.

714 "D"

2nd Indemnity North of N. P. Road—4th P. M.

(Examinations made between Feby. 23rd & Mch. 19th, 1901.)

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
W ½ ne	3	54	20	80.80	Selected by N. P. Oct. 17/83. Relinquished Apr. 11/93. Vacant since.
Nw se	5	54	20	40.00	Same as above.
E ½, nw ½ & ne sw	11	54	20	520.00	" " "
Ne, sw, n ½ se & sw se	13	54	20	440.00	" " "
Se sw	21	54	20	40.00	" " "
N ½ nw	29	54	20	80.00	" " "
Nw ne	33	54	20	40.00	" " "
Nw se & ne sw	13	55	20	80.00	" " "
Ne, e ½ nw, ne sw & nw se	23	55	20	320.00	Same as above.
Ne ne	25	55	20	40.00	" " "
W ½ se	5	54	21	80.00	" " "
N ½ ne	15	54	21	80.00	" " "
S ½ nw	15	54	21	80.00	" " " but same tract entered Feb. 9/95
Lot 4	19	54	21	41.42	Selected & relqd by N. P. as above but tract entd. May 10/99
Se nw, sw ne & nw se	27	54	21	160.00	Selected and relqd. by N. P. as above tracts were entered entry canceled Dec. 31/98—re-entered Mch. 13/99, which entry is pending.
Se sw	27	54	21	40.00	Vacant
Ne sw, sw sw & se se	33	54	21	120.00	Selected & relqd. by N. P. as above. Ne sw vacant until Nov. 28/98 Se se vacant until Nov. 23/94 Sw sw vacant until Sept. 11/94
S ½ ne, e ½ sw, e ½ sw & se se	35	54	21	280.00	Selected & relqd. by N. P. as above. S ½ ne & e ½ se vacant until Nov. 23/94 E ½ sw vacant until Oct. 23/94 Sw se still vacant
Lot 6	21	55	21	00.30	Vacant
Lots 1 & 6	33	55	21	56.00	Selected & relqd. by N. P. as above. Vacant since relqd.
Sw se	3	53	22	40.00	Selected by N. P. Oct. 17/83 relinquished Apr. 11/93, Vacant until Nov. 15/94.
Sw ne & e ½ nw	25	54	22	120.00	Selected & relqd. by N. P. as above. Vacant until May 10/99.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Se ne, se nw, ne sw & se se	27	54	22	160.00	Selected & relqd. by N. P. as above. Vacant since relqd.
Ne se	29	54	22	40.00	Selected & relqd. by N. P. as above. Vacant until Sept. 24/94
Nw se	33	54	22	40.00	Selected & relqd. by N. P. as above. Vacant until Apr. 9/95
Sw sw	35	54	22	40.00	Selected & relqd. by N. P. as above. Vacant until Jan. 3/99
W ½ nw	19	53	23	105.14	Selected & relqd. as above. Vacant since relqd.
Sw ne	3	54	23	40.00	Selected & relqd. as above. Vacant since relqd.
Lot 10, s ½ sw & sw ¼	5	54	23	282.25	Same as above.
S ½ se	7	54	23	80.00	" " "
Ne nw	9	54	23	40.00	" " "
N ½ se & sw se	9	54	23	120.00	Selected as relqd. as above. Vacant until Nov. 23/94
Ne ¼, nw ¼ & se ¼	17	54	23	480.00	Selected & relqd. as above. Vacant until May & Aug. 1900
N ½ sw	17	54	23	80.00	Selected & relqd. as above. Vacant since relqd.
Sw ne, se nw, ne sw, n ½ se, Lots 3 & 4	19	54	23	283.28	Same as above.
Nw nw	27	54	23	40.00	" " "
N ½ ne, sw ne, nw ¼, se se, w ½ se & n ½ sw	29	54	23	480.00	Selected and relqd. as above. Sw nw, nw sw vacant until Aug. 31/96 Ne sw, w ½ se, se se vacant until Aug. 4/96 Ne ne & nw nw vacant since relqd.
Lot 2, se nw, ne sw & se se	31	54	23	160.87	Selected by N. P. Oct. 17/83 relinquished Apr. 11/93 Se se vacant until Aug. 9/96 Lot 2, se nw & ne sw, vacant since relqd.
Nw ¼, n ½ sw & lot 6	33	54	23	272	Selected & relqd. as above. W ½ nw vacant until Dec. 10/96 E ½ nw, sw & lot 6, vacant since relqd.
Se ne, e ½ sw & nw se	35	54	23	160.00	Selected & relqd. as above. Ne sw vacant until July 25/1900 Se ne, nw se & se sw vacant since relinquished.
W ½ ne, sq nw & nw se	27	55	23	160.00	Selected & relqd. as above and vacant since relqd.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Lots 1, 7, 8 n ½ ne, e ½, sw & w ½ se	31	55	23	297.00	Selected & relqd. as above. N ½ ne lots 7 & 8 vacant until July 18/98 E ½ sw & w ½ se vacant until Nov. 19/97 Lot 1=5.75 vacant since relqd.
Lots 3, 4 & 5	1	53	25	69.50	Claimed as swamp—No selections nor entries of record.
Lot 1 & se ¼	3	53	25	188.46	Same as above.
E ½ se & sw se	5	53	25	120.00	" " "
E ½ se & se sw	7	53	25	120.00	" " "
N ½ nw, ne nw & s ½ sw	9	53	25	200.00	" " "

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PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Se ne	9	53	25	40.00	Vacant since May 14/75
Sw sw	13	53	25	40.00	Claimed as swamp but no selections nor entries of record.
Lots 1 & 4	15	53	25	62.50	Same as above.
S ½ nw, se nw, n ½ of s ½ & se se	17	53	25	320.00	Same as above.
Ne ¼, ne se	19	53	25	200.00	" " "
Sw nw, se se, nw se & sw ¼	21	53	25	280.00	" " "
Se ne & s ½	25	53	25	360.00	" " "
~~Lot 1~~	~~27~~	~~53~~	~~25~~	~~27.25~~	~~" " "~~
S ½ nw, se nw, n ½ of s ½ & se se	17	53	25	320.00	Same as above.
Ne ½ ne se	19	53	25	200.00	" " "
Sw nw, se se, nw se & sw ¼	21	53	25	280.00	" " "
~~Se ne & s ½~~	~~25~~	~~53~~	~~25~~	~~360.00~~	~~" " "~~
Lot 1	27	53	25	27.25	" " "
W ½ nw, n ½ se, sw se e ½ sw & nw sw	29	53	25	320.00	Same as above.
W ½ of e ½, e ½ sw, nw sw, & nw ¼	33	53	25	440.00	Claimed as swamp. No selections nor entries of record.
E ½ ne, sw nw Lots 1 & 2	35	53	25	180.00	Same as above.
Nw nw	15	54	25	40.00	Withdrawn by Proclamation No. 874 — Restored June 20/90. Vacant since.
N ½ ne	25	54	25	80.00	Same as above.
Lots 1 & 2	25	54	25	72.20	" " " entered Mch. 25/96—entry cancld. June 19/97. Vacant since.
Se ne	29	54	25	40.00	Withdrawn & restored as above. Vacant since restoration.
E ½ sw & sw sw	1	53	26	120.00	Same as above.
Nw nw	35	53	26	40.00	Claimed as swamp Nov. 21/76. No selections nor entries of record.
Lots 1, 2 & 5	23	54	26	62.85	Withdrawn by Proclamation No. 874. Restored June 20/90. Vacant since restoration.
E ½	35	54	26	320.00	Withdrawn and restored as above. Ne vacant until Dec. 14/96 Se " " Aug. 12/96.
Lot 6	27	54	27	25.00	Vacant until Dec. 19/96.

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PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
		5TH P. M.			
E ½ ne	11	140	26	80.00	Selected by N. P. Oct. 17/83 Relinquished Apr. 20/98 Vacant from Apr. 20/98 until Oct. 20/98.
Sw ne & nw sw	13	141	26	80.00	Selected & relqd. as above, reselected May 7/98—canceld. F'by. 20/03.
W ½ nw	15	141	26	80.00	Same as above.
Lot 1	17	141	26	31.30	Selected & relqd. by N. P. as above. Vacant since relqd.
Nw ne & sw nw	23	141	26	80.00	Same as above.
Lots 3 & 4	25	141	26	100.00	" " "
Lot 1	31	141	26	23.70	" " "
E ½ nw	33	141	26	80.00	Selected by N. P. Oct. 17/83 Relinquished Apr. 20/98 Vacant until Mch. 6/99
Lot 1	25	142	26	14.75	Selected & relqd. by N. P. as above. Vacant since relqd.
S ½ se	29	142	26	80.00	Selected & relqd. by N. P. as above. Se se was reselected by N. P. May 7/98, canld. Feby 9/99—vacant since. Sw se vacant since relqd.
N ½ se & lot 6	31	142	26	112.75	Selected & relqd. by N. P. as above. Vacant since relqd.
Lots 2, 3 & 4, se ne, sw ne, nw se & se sw	1	141	27	288.16	Selected & relqd. by N. P. as above. Sw ne re-selected by N. P. May 7/98. Canceld Feby. 9/99. Vacant since. Lots 2, 3 & 4, sw ne & se sw & nw se vacant since relqd.
Se se & w ½ sw	1	141	27	120.00	Claimed as swamp Nov. 21/79 Canceled Feby. 9/99—No selections nor entries of record.
Lots 4, 7, se ne & ne se	5	140	27	80.00	Selected by N. P. Oct. 17/83 relqd. Apr. 20/98—Vacant since relqd.
N ½ ne & sw sw	9	140	27	120.00	Same as above.
Se ne	11	140	27	40.00	" " "
Lot 2, s ½ sw & sw sw	3	140	27	164.47	Selected by N. P. Oct. 17/83 relqd. Apr. 20/98. Vacant since relqd.
Sw ne & e ½ se	11	141	27	120.00	Same as above.
N ½ ne	11	141	27	80.00	Claimed as swamp Nov. 21/79 No selections nor entries of record.
Lots 4 & 5 & e ½ se	13	141	27	146.90	Selected by N. P. Oct. 17/83 Relinquished Apr. 20/98 E ½ se vacant until Mch. 6/99. Lots 4 & 5 vacant since rlqd.
Lot 3 & sw se	15	141	27	67.80	Same as above.
Lot 4 & sw sw	15	141	27	90.00	Claimed as swamp Nov. 21/79 No selections or entries of record.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Se ne, ne nw, se se, nw se & ne sw	21	141	27	200.00	Selected by N. P. Oct. 17/83 Relinquished Apr. 28/93 Vacant since relqd.
Sw sw	21	141	27	40.00	Claimed as swamp. No selections nor entries of record.
Lot 1 & sw ne	23	141	27	79.85	Selected by N. P. Oct. 17/83 Relinquished Apr. 28/93 Vacant since relqd.
Sw sw	25	141	27	40.00	Same as above.
Ne ne, nw nw, s ½ nw & n ½ sw, se sw & se ¼	25	141	27	440.00	Claimed as swamp Nov. 21/76 No selections nor entries of record.
N ½, n ½ sw & nw se	33	141	27	440.00	Same as above.
Sw sw	33	141	27	40.00	Selected by N. P. Oct. 17/83. Relinquished Apr. 28/93. Vacant since relinquished.
Lots 1, 2, ne se	35	141	27	101.85	Claimed as swamp Nov. 21/76 no selections nor entries of record.
W ½ ne, w ½ nw, n ½ se & nw sw	1	139	28	280.00	Selected by N. P. Oct. 17/83. Relinquished Apr. 28/93, Vacant since relqd.
Ne sw	5	139	28	40.00	Vacant.
Lots 7 & 9	1	140	28	56.41	Selected by N. P. Oct. 17/83. Relinquished Apr. 28/93. Vacant since relqd.
Lot 4	1	140	28	37.55	Claimed as swamp. No selections nor entries of record.
Lot 8	1	140	28	1.40	Claimed as swamp. No selections nor entries of record.
Lot 1 & sw ne	3	140	28	77.97	Selected by N. P. Oct. 17/83, relinquished Apr. 28/93. Vacant since relqd.
Lots 3, 6, 7, 8, 9, sw sw s ½ se & ne se	5	140	28		Same as above.
All of sec. or lots 1, 2 & 3	7	140	28	33.20	Selected & relqd. by N. P. as above. Lot 2 sold July 29/99. Lots 1 & 3 vacant since relqd.
Lots 3, 6, 7, 8, 9, sw sw s ½ se & ne se	5	140	28		Selected & relqd. by N. P. as above. Vacant since relqd.
Lots 1, 2, & 3	7	140	28	33.20	Selected & relqd. by N. P. as above. Lot 2 vacant up to July 29/99. Lots 1 & 3 vacant since relqd.
W ½ nw	9	140	28	80.00	Vacant from Aug. 6/75 to Mch. 5, 1901.
Nw nw	11	140	28	40.00	Vacant up to Mch. 5, 1901.
Lot 7	11	140	28	2.00	Selected & relqd. by N. P. as above. Vacant since relqd.
Lot 1	33	140	28	18.25	Same as above.
Sw se, se sw, Lot 6, ne sw & n ½ se	35	141	28	233.45	Same as above.
Lot 4	3	139	29	35.52	Same as above.

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PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Lots 1, 2, 3, 8 se nw & sw ne	5	139	29	170.85	Same as above.
Lots 1, 2, sw ne, sw ¼, sw ¼ & ne se	11	139	29	485.15	Selected & relqd. by N. P. as above. Lots 1, 2 & sw ne entd Mch. 2/98 nw ¼ " Jan. 5/99 sw ¼ " July 9/97 ne se vacant since relqd.
Lots 3, 9, 10, 11 & s ½ sw	15	139	29	176.10	Selected & relqd. by N. P. as above. Vacant since relqd.
Lots 1, 8, 9, 10, 11, sw se & ne ne	1	140	29	282.91	Selected by N. P. June 18 & Oct. 17/83, relinquished Apr. 28/93. Lot 1 vacant until May 16/95 Lots 8, 9, 10, 11, sw se & ne se vacant since relqd.
Lots 1, 3, 6, 9, & w ½ ne	9	140	29	172.25	Selected & relqd. by N. P. same as above. Vacant since relqd.
Lots 1, 4, 5, 6, 7, 8, 9, 11, & 12, ne nw & se se	19	140	29	448.11	Same as above. Se se lots 11, 12, 7 & 8 vacant until July 10/99. Lots 4, 5, & 6 vacant until Sept. 23/99. Lots 1 & 9 & ne nw vacant since relqd.
Nw nw	29	140	29	40.00	Selected & relqd. by N. P. as above. Vacant since relqd.
Lot 5	31	140	29	47.05	Same as above.
N ½ ne, sw ne, n ½ sw, se sw, w ½ se & se se	9	138	30	360.00	Selected & relqd. by N. P. as above. N ½ ne entered June 5/99. Nw sw, e ½ sw & nw se entd. May 2/99. Sw ne & s ½ se vacant since relqd.
E ½ se & Lot 1	1	139	30	114.90	Selected & relqd. by N. P. as above. Vacant since relqd.
Ne ne, s ½ ne & se ¼	5	139	30	280.00	Same as above.
Lot 5 & se se	13	139	30	65.45	" " "
Lots 2 & 3 of nw ¼	19	139	30	94.68	Selected & relqd. by N. P. as above. Entered Apr. 5/95.
W ½ sw, ne se & Lot 3	21	139	30	132.70	Selected & relqd. by N. P. as above. Vacant since relqd.
Lot 1	27	139	30	1.20	Vacant.
Se ne & e ½ se	23	140	30	120.00	Selected & relqd. by N. P. as above Apr. 27/98.
Ne nw, w ½ sw & se sw	31	140	30	147.56	Selected & relqd. by N. P. as above. Vacant since relqd.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Se nw, w ½ nw, sw ¼, nw se, s ½ se lots 3 & 4	33	140	30	448.15	W ½ nw entered Apr. 23/1900. E ½ sw & w ½ se entd. Dec. 1/99. Lots 3 & 4 & se se entd. Nov. 11/99. W ½ sw entered Apr. 17/1900. Se nw Vacant since relqd.
E ½ se, sw se & se sw	35	140	30	160.00	Selected Oct. 17/83 by N. P. & relinquished Apr. 28/93. Same tracts entered Dec. 23/97. Selected & relqd. by N. P. as above.
Se sw, sw se, e ½ se & Lot 4	5	138	31	198.25	S ½ se, ne se & se sw entered Feby. 21, 1900. Lot 4 Vacant since relqd.
720					
Nw se, lots 1 & 3	7	138	31	108.30	Selected & relqd. by N. P. as above. Lot 1 entered May 22/97. Lot 3 & nw se Vacant since relqd.
S ½ sw	11	138	31	80.00	Selected & relqd. by N. P. as above. Vacant since relqd.
E ½ se	1	139	31	80.00	Selected & relqd. by N. P. as above. Sold at public sale Nov. 23/95.
Lots 9 & 10	5	139	31	8.95	Selected & relqd. by N. P. as above. Lot 9 entered Sept. 28/1900. Lot 10 Vacant since relqd.
All sec.	7	139	31	574.78	Selected & relqd. by N. P. as above. W ½ ne & e ½ nw entd. Feb. 9/97. Lots 1 & 2 entd. May 31/99. W ½ se & se se entd. June 21/ 97. E ½ sw & lots 3 & 4 entd. June 21/97. Lots 5, 6 & 7 Vacant since relqd.
Ne se	11	139	31	40.00	Selected & relqd. by N. P. as above. Reselected by N. P. May 7/96. Canceld. Feby. 9/98. Vacant since.
Lots 1 & 2, w ½ ne, nw ¼, sw ¼ & nw se	17	139	31	507.50	Selected & relqd. by N. P. as above. Lot 2 Vacant since relqd. Balance entd. in 1898, 99 & 1900.
E ½ ne & sw ne	19	139	31	120.00	Selected & relqd. by N. P. as above. E ½ ne entered May 7/98. Sw ne Vacant since relqd.
Lots 1, 2, 3, 4 se sw, e ½ se & se ne	31	139	31	293.67	Selected & relqd. by N. P. as above. Se ne & ne se Vacant since relqd. Bal. entered in 1900.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Se nw, w ½ sw & ne sw	33	139	31	160.00	Selected by N. P. Oct. 17/83—relinquished Apr. 28/93, Se nw Vacant since relqd. Bal. entered June 6/96.
N ½ nw	29	140	31	80.00	Selected by N. P. & relqd. as above. Vacant since relqd.
S ½ ne, e ½ nw, lots 1, 2, 3 & 4 & se sw & w ½ se	31	140	31	445.03	Selected & relqd. by N. P. as above. All entered in 1897.
Se se	31	140	31	40.00	Selected June 18/83. Relqd. Apr. 28/93 (?) entered in 1897.
Lots 3, 7, se ne, ne se Lots 4 & 9	33	140	31	176.80	Selected by N. P. Oct. 17/83—relinquished Apr. 28/93. Lots 3, 4, 7 sold Nov. 23/95. Se ne, ne se & lot 9 vacant since relqd.
Sw ne & n ½ ne	35	140	31	120	Selected & relqd. by N. P. as above. Sw ne was reselected May 1. 96. This selection is still of record. N ½ ne vacant since relqd.
Lot 1, s ½ ne, se nw n ½ sw, se sw & se ¼	1	138	32	440.16	Selected by N. P. Oct. 17/83. relqd. Apr. 28/93. All entered in 1896.
721 Ne se	3	138	32	40.00	Selected & relqd by N. P. as above. Entered Mch. 9, 1900.
Lots 1, 2, 3, 4, sw ne, s ½ nw, ne sw & nw se	5	138	32	363.58	Selected & relqd. N. P. as above. All entered in '98 '99 & 1900.
All of	1	139	32	619.84	Selected & relqd. by N. P. as above. All entered in '96 & '97.
(See T. B. again) All of	3	139	32	612.48	Selected & relqd. by N P. as above. Sw ne Vacant. Bal. entered in '96 '97 '99 & 1900.
All of	5	139	32	620.64	Selected by N. P. Oct. 17/83. Relinquished Apr. 28/93. All entered in '95 & '96.
(See T. B. as to entries) All of	7	139	32	646.82	Selected & relqd. by N. P. as above. Se entered May 14/89. Bal ent'd. '94 '95 '96 & 97.
E ½ ne, n ½ nw, se nw, se ¼ & sw ¼	9	139	32	520.00	Selected & relqd. by N. P. as above. All entered in '96, '97 & '99.
All of	11	139	32	640.00	Selected & relqd. by N. P. as above. All entered in '96 & '98.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
N ½ ne, nw ¼, sw ¼ & e ½ se	13	139	32	480.00	Selected & relqd. by N. P. as above. N ½ ne & nw ¼ entered in 97 & 98. Sw ¼ & e ½ se vacant since relqd.
N ½, n ¼ se & n ½ sw	15	139	32	480.00	Selected & relqd. by N. P. as above. N ½ ne se entered in '87 & 98. N ½ sw & nw se. Vacant since relqd.
Ne ¼, se ¼, n ½ nw lots 1 & 2	17	139	32	459.55	Selected & relqd. by N. P. as above. E ½ ne & e ½ se entered 1899. Nw nw & Lot 1 entered 1898. Lot 2, w ½ se & w ½ ne Vacant since relqd.
All of	19	139	32	652.75	Selected & relqd. by N. P. Same as above. Lots 2, 3, 4 & 5=173.30. Vacant since relqd. Bal.=479.45 [a] entered in '96, 97 & '98.
Ne ¼, e ½ nw, n ½ se, sw se, n ½ sw & sw sw	21	139	32	480.00	Selected & relqd. by N. P. as above. Se ne, ne se, sw se & nw sw=160. Vacant since relqd. Bal.=320. entered '96, 97 & 98.
Nw sw	23	139	32	40.00	Selected & relqd. by N. P. as above. Vacant since relqd.
E ½ se	25	139	32	80.00	Same as above.
Ne ne, s ½ ne, ne sw, w ½ nw, nw sw, e ½ sw & se ¼	29	139	32	520.00	Selected by N. P. Oct. 17/83—. Relinquished Apr. 28/95. E ½ ne, sw ne, n ½ nw, sw nw se ¼. Nw sw & se sw entered in '96 & '97. Ne sw vacant since relqd.
(See T. B.) n ½, n ½ se, sw se, n ½ sw, sw sw	31	139	32	570.64	
Nw nw	33	139	32	40.00	Selected & relqd. by N. P. as above. Entered Nov. 22/98.
722					
Lots 4, 5, 6 & 8	19	140	32	131.09	Selected by N. P. and relinquished and entered Jany. 15/97
All of	21	140	32	640.00	Selected and relqd. by N. P. as above and entered in '96, '97 & '98.
Se ¼ & sw	23	140	32	320.00	Selected & relqd. by N. P. as above & entered in 1896.
Se ne, ne ne & w ½	25	140	32	400.00	Selected & relqd. by N. P. as above & entered in 1896.
All of	27	140	32	640.00	Selected & relqd. by N. P. as above & entered in '95, '96 & 98.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
All of	29	140	32	640.00	Selected & relqd. by N. P. as above & entered in '95 & '96.
Lots 1 & 7, se ne & se ¼	31	140	32	264.64	Selected & relqd. by N. P. as above. Lots 1 & 7, se ne, n ½ se & sw se entered in 1897. Se se=40. Vacant since relqd.
All of	33	140	32	640.00	Selected & relqd. by N. P. as above & entered in '96 & 97
All of	35	140	32	640.00	Selected & relqd. by N. P. as above & entered in '96 & '97
(See F. B. again) (Sig 17 of notes) n ½ se & e ½ sw	1	140	33	160.00	Selected by N. P. Oct. 17/83 & relinquished Apr. 29/93 ne se entered Nov. 3/98 nw se & ne sw entered Dec. 3/97 se nw reselected by N. P. May 7/96
S ½ nw	3	140	33	80.00	Selected by N. P. Oct. 17/83 & relinquished Apr. 28/93—entered Dec. 2/98
Lots 3, 4, 5, 9, 10, 11 & sw sw	5	140	33	152.65	Selected & relqd. by N. P. as above. Lot 5 sold at private sale. Lots 3 & 4 entered June 1, 1900. Sw sw & lots 1 & 11 entered Dec. 14/97. Lot 10 (in nw ¼) =0.03 Vacant since relinquishment
Ne sw, sw sw & se ¼	23	140	33	240.00	Selected by N. P. Oct. 17/83 and relinquished Apr. 28/93 sw sw entered May 11, 1900 se se entered Oct. 5, 1900 w ½ se & ne se entered Oct. 5, 1897 ne sw vacant since relinquishment.
N ½ ne, n ½ nw & n ½ sw & se sw	25	140	33	280.00	Selected & relqd. by N. P. as above. N ½ ne entered Sept. 13/99 n ½ nw entered July 21/97 e ½ sw & nw sw entered Apr. 14/97 [enty] canceld. Dec. 10, 1900 & is vacant Mch. 11, 1901.
N ½ ne	27	140	33	80.00	Selected & relqd. by N. P. as above & entered Dec. 21/99.
N ½ se, n ½ sw, se se & sw sw	29	140	33	240.00	Selected & relqd. by N. P. as above. W ½ sw, ne sw & nw se entered e ½ se reselected by N. P. May 7/96 & selection canceld. Feby 9/98 & vacant since canceln.
S ½ sw	33	140	33	80.00	Selected & relqd. by N. P. as above & entered Mch. 22/97

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
N ½ ne	31	141	33	80.00	Selected & relqd. by N. P. as above & entered Feby.9/97.
Lots 2, 3, 4, 5, 7, 8 w ½ nw, w ½ sw & se sw	33	141	33	432.80	Selected & relqd. by N. P. as above. W ½ nw & lots 2 & 3 entd. Jan. 15/97. Lots 7 & 8 entd. Dec. 9/97 s ½ sw entd. May 31/99 nw nw & lot 4 reselected by N. P. May 7/96 Canceld. Feb. 9/98 & vacant since cancellation Lot 5. Vacant since relinquishment.
W ½ nw	21	140	34	80.00	Vacant until Aug. 12/97
Nw nw	25	140	34	140.00	" since Aug. 20/91
Sw ¼	5	141	34	160.00	Selected by N. P. Oct. 17/83 & relinquished Apr. 28/93 & entered May 21/98.
Lot 6	7	141	34	48.50	Selected & relqd. by N. P. as above, re-selected May 7/96 canceled. Feby. 9/98. Vacant since cancellation.
Sw ¼	15	141	34	640.00	Selected & relqd. by N. P. as above. N ½ sw entered Sept. 21/99 s ½ sw reselected by N. P. May 7/96 canceld. Feb. 9/98
Lots 5, 6 & 7	19	141	34	78.05	Selected & relqd. by N. P. as above & entered Jany.18/99
S ½ sw & sw se	29	141	34	120.00	Selected & relqd. by N. P. as above & entered Sept. 18/98. The s ½ sw was approved to R. R. Dec.24/94.
Lot 2	3	141	35	22.10	Vacant since Mch 4/92
Lots 4, 6, 7, S ½ nw sw ¼ & sw se	5	141	35	396.26	Selected by N. P. Oct. 17/83 & relinquished Apr. 28/93 Lot 4 & s ½ nw entered Dec. 19/98 Lot 7 & sw se entered Aug. 3/97 sw ¼ entered June 2/96.
All of	7	141	35	584.70	Selected & relqd. by N. P. as above. Ne ¼ entered July 1/96 e ½ nw & lots 1 & 2 entd. June 22/96 se ¼ entd. Oct. 29/96 e ½ sw & Lots 3 & 4 entd. Jan. 15/97.
Sw ne, se nw, ne sw, sw se & lot 5	9	141	35	183.75	Selected & relqd. by N. P. as above. Sw se & lot 5 entd. July 17/99 sw ne, se nw & ne sw ented. Dec. 10/98
N ½ se, Lots 1 & 2	11	141	35	134.75	Vacant from June 23/85 to Sept. 21/96
W ½ nw, se nw & sw ne	17	141	35	160.00	Selected by N. P. Oct. 17/83 & relinquished Apr. 28/93 & all entered June 9/98.
Se ne	17	141	35	40.00	Vacant since Mch 4/92

724

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
(See T. B. again) (if sel. & relqd.) N ½ ne, se ne, e½ nw, Lots 1 & 2, se ¼ & e ½ sw	19	141	35	597.20	Selected by N. P. Oct. 17/83 & relinquished Apr. 28/93. Se sw & s ½ entered June 23/00. N ½ ne & se ne entered Apr. 1/98. Balance entered in 1896.
Nw se & sw ne	21	141	35	80.00	Entered July 25/88—enty. canceled Mch. 29/93—Vacant after cancellation of entry.
Se ne & ne se	21	141	35	80.00	Entered Aug. 9/81 entry canceled June 23/85—Vacant after cancellation of entry
W ½ nw & se nw	27	141	35	120.00	Selected by N. P. Oct. 17/83 & relinquished Apr. 28/93. Same tracts entered Sept. 11 96 and canceled May 4/97. Tracts vacant since cancelation of entry.
See T. B. again) N ½ nw, sw nw & lot 2 & nw sw	29	141	35	189.00	Selected & relqd. by N. P. as above. W ½ nw, nw sw & lot 2 entered Nov. 18/96 Ne nw entered Dec. 21/99.
S ½ ne, ne nw & ne se	31	141	35	160.00	Selected & relqd. by N. P. as above. S ½ ne & ne se entered Nov. 12/98 Ne nw vacant since relinquishment.
W ½ nw	33	141	35	80.00	Selected & relqd. by N. P. as above & entered Dec. 11/96
Nw ne & ne nw,	33	141	35	80.00	Vacant since Mch. 4/92
Nw nw & n ½ se,	35	141	35	120.00	Selected by N. P. Oct. 17/83 & relinquished Apr. 28/93 N ½ se entered July 13/97 Nw nw " Nov. 11/98.
Lot 4, sw nw & sw sw	5	142	35	114.17	Selected by N. P. Oct. 17/83 & relinquished Apr. 28/93 and vacant since relinquishment.
W ½ sw & se nw	9	142	35	120.00	Selected & relqd. by N. P. as above. Nw sw entered June 9/98 Se nw & sw sw vacant since relinquishment. The record (or tract book) shows w ½ nw to be relinquished but should be w ½ sw The w ½ nw is shown to be apprd. lien.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Ne nw, s ½ nw, w ½ sw & sw se	15	142	35	240.00	Selected & relqd. by N. P. as above. Ne nw entered Nov. 22, 98. Sw sw entered Dec. 7/98. S ½ nw, nw sw & sw se vacant since relinquishment.
E ½ se, n ½ sw, sw sw & n ½	17	142	35	520.00	Selected & relqd. by N. P. as above. Ne ne entered June 9/98 Nw ne, n ½ nw & sw nw entd. Apr. 20/97 S ½ ne & e ½ se entd. Feby. 3/98 Se nw, n ½ sw & sw sw entd. Mch. 5/97.
725					
All of	19	142	35	540.85	Selected & relqd. by N. P. as above. Ne ¼ entered May 19/96 N ½ se " Jan. 23/1900 E ½ sw & s ½ se entered Aug. 3/96 Lots 1, 2 & 3 entered Dec. 14/98
Ne nw & s ½ sw	21	142	35	120.00	Selected & relqd. by N. P. as above. Sw sw entered May 19/96 Ne nw & se sw vacant since relinquishment
W ½ ne	27	142	35	80.00	Selected & relqd. by N. P. as above & vacant since relinquishment.
Sw ne, se nw, w ½ nw, se ¼ & sw ¼	29	142	35	480.00	Selected by N. P. Oct. 17/83 & relinquished Apr. 28/93 Sw ne, se nw & w ½ nw entered Feb. 13/97 Se entered Nov. 10/97 Se " June 5/96
Sw ne, w ½ se & lot 3	31	142	35	149.00	Selected & relqd. by N. P. as above. Sw ne, w ½ se & lot 3 entered Jan. 15/97.
Se ne	31	142	35	40.00	Vacant since Mch. 4/92
N ½ sw & nw se	35	142	35	120.00	Selected by N. P. Oct. 17/83 relinquished Apr. 28/93 N ½ sw Vacant since relinquishment. Nw se re-selected by N. P. May 7/96. Canceled Feb. 9/98 Vacant since cancellation.
Se ¼, sw ¼ & lots 1, 2, 5, 6 & 8	1	141	36	466.55	Selected by N. P. Oct. 15/83, and relinquished Apr. 19/93 N ½ se, lots 1 & 8 entered Feb. 11/98 Sw ¼ entered Apr. 8/99 Lots 2, 5, 6 & e ½ se vacant since relinquishment.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
S ½ ne, s ½ nw, n ½ sw, sw sw n ½ se, lots 1, 2 & 3	3	141	36	480.66	Selected by N. P. & relqd. as above. N ½ se & n ½ sw entered Apr. 19/98 Sw sw entered Mch. 28/1900. Lots 1, 2, 3, s ½ ne & s ½ nw vacant since relinquishment.
S ½ ne, se sw, se ¼, Lots 1, 2, 4 & 6	5	141	36	408.56	Selected & relqd. by N. P. as above. Lots 1 & 2 entered June 14/98 S ½ ne " Dec. 10/98 Lot 6 " June 14/98 Se ¼ " Aug. 22/98 Se sw & lot 4 entered June 27/00
W ½ ne, nw ¼, nw sw lot 3	9	141	36	306.75	Selected by N. P. Oct. 15/83 & relinquished Apr. 19/93 W ½ ne & se nw entered Feb. 21/99 N ½ nw, sw nw & nw sw entd. July 30/98 Lot 3 vacant since relinquishment
726					
W ½ ne, s ½ nw, nw sw lots 4 & 5	11	141	36	285.65	Selected & relqd. by N. P. as above. W ½ ne entered Oct. 2/1900. Sw nw " Sept. 19/99 Lots 4 & 5 & nw sw entered Oct. 8/98 Se nw vacant since relinquishment.
Ne ¼ & ne nw	13	141	36	200.00	Selected & relqd. by N. P. as above. Ne ¼ entered Nov. 16/97 Ne nw vacant since relinquishment.
S ½ ne, w ½ nw, se nw, n ½ sw & sw sw	15	141	36	320.00	Selected & relqd. by N. P. as above. Nw nw vacant since relinquishment. Balance entered in 1900.
(See T. B. again) (Sig. 24 of notes) Ne ne & Lot 3	23	141	36	68.90	Selected & relqd. by N. P. as above. Ne ne entered May 11/99. Lot 3 vacant since relinquishment.
Lot 2	23	141	36	44.80	Vacant since Jan. 12/92
Se sw & s ½ se	25	141	36	120.00	Selected & relqd. by N. P. as above & vacant since relinquishment.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Ne ne	25	141	36	40.00	Vacant since Jan. 12/92
E ½ sw & sw se	27	141	36	120.00	Selected & relqd. by N. P. as above. E ½ sw entered Aug. 7/99 Sw se vacant since relinquishment.
Se sw	35	141	36	40.00	Selected & relqd. by N. P. as above. Vacant since relinquishment.
Sw nw, ne se, s ½ se lots 2 & 3	5	142	36	239.60	Selected by N. P. Oct. 15/83 & relinquished Apr. 19/93 and vacant since relinquishment.
E ½ se, ne sw & lot 5	7	142	36	160.26	Selected & relqd. by N. P. as above & vacant since relinquishment.
N ½ ne, sw ne, nw ¼, w ½ sw, se sw, s ½ se & ne se	9	142	36	520.00	Selected & relqd. by N. P. as above. Sw ne, ne nw, nw sw, sw sw & ne se reselected by N. P. Feb. 7/96 but not yet apprd. Ne ne, nw ne, s ½ nw, se sw, nw nw & s ½ se vacant since relinquishment.
Ne sw	11	142	36	40.00	Selected & relqd. by N. P. as above and vacant since.
Se nw, se sw & lot 2	13	142	36	120.00	Selected & relqd. by N. P. as above and vacant since relinquishment.
N ½ ne & se ne	15	142	36	120.00	Same as above.
Ne ne, sw ne, S ½ nw & e ½ sw	17	142	36	240.00	Same as above.
727					
E ½ sw, n ½ ne, sw ne, e ½ nw, w ½ se se & lot 2	19	142	36	438.75	Selected by N. P. Oct. 15/83 relinquished Apr. 19/93 E ½ sw, se nw & lot 2 entered Mch. 30/1900. N ½ ne, sw ne, w ½ se, se se & ne. Nw Vacant since relinquishment
W ½ ne, se ne, sw sw & se ¼	21	142	36	320.00	Selected & relqd. by N. P. as above and vacant since relinquishment.
W ½ ne, se nw, e ½ sw & sw se	23	142	36	240.00	Selected & relqd. by N. P. as above. Sw ne & sw se re-selected by N. P. Feb. 7/96. Nw ne, se nw & e ½ sw Vacant since relinquishment.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
Ne ¼, w ½ nw, nw sw, se sw, n ½ se & sw se	25	142	36	440.00	Selected by N. P. Oct. 15/83, relinquished Apr. 19/93. N ½ ne entered Mch. 6, 1900. N ½ se & s ½ ne entered Dec. 9/98 Nw sw reselected by N. P. Feb. 7/96 W ½ nw, se sw & sw se vacant since relinquishment.
W ½ ne, nw ¼, w ½ se & sw ¼	27	142	36	480.00	S ½ sw entered Apr. 12/00 W ½ ne, nw ¼, w ½ se & n ½ sw vacant since relinquishment.
Ne ¼, w ½ se, lots 2, 4, 5 & 7	29	142	36	237.15	Selected & relqd. by N. P. as above. Sw se, nw ne, lots 2, 4, 5 & 7 entd in 1900. Ne ne, s ½ ne & nw se vacant since relinquishment.
E ½ nw, e ½ sw, lots 3 & 4 & e ½	31	142	36	557.90	Selected & relqd. by N. P. as above Ne ne entered May 2/1900. Nw ne, s ½ ne, se ¼ e ½ nw, e ½ sw & lots 3 & 4 vacant since relinquishment.
Ne nw & sw ¼	33	142	36	200.00	Selected & relqd. by N. P. as above. W ½ sw entered Mch. 14/99 Ne nw & e ½ sw vacant since relinquishment.
N ½ ne, sw ne, e ½ sw & se ¼	35	142	36	360.00	Selected & relqd. by N. P. as above. W ½ ne & w ½ se entered Sept. 6/00 Se sw re-selected by N. P. Feb. 7/96, E ½ se, & ne ne vacant since relinquishment.
Se nw	35	142	36	40.00	Vacant.
Se ne, ne sw & s ½ se	17	143	36	160.00	Selected by N. P. Oct. 15/83 relinquished Apr. 19/93 and vacant since relinquishment.
Ne ne, w ½ se, se se & lot 4	31	143	36	200.14	Selected by N. P. Oct. 15/83 relinquished Apr. 19/93 and vacant since relinquishment.
E ½ sw & lot 4	31	144	36	117.13	Vacant up to Jan. 17/1900 entry was canceled Feb. 13/01 for relinquishment & vacant since.

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PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
Se ¼	31	144	36	160.00	Vacant
Ne ¼ & se ¼	11	145	48	320.00	Selected by St. Vin. Ex. & St. P. & P. R. R. Nov. 1/7 Relinquished by the Governor July 26/80 to Ole J. Paulson & Ole Halstad. These two parties had D. S. filings on the land July 3/71 & Aug. 2/72. These filings were canceld. Apr. 7/73, and land has been vacant since canc'n. of filings.
Se ne, lots 3, 5, & 6	13	145	49	95.00	Vacant since Apr. 7/73

729

WASHINGTON EXHIBIT "E"

Offered in evidence at page 294, this record.

	PARTS OF SECTIONS.	Section.	Town.	Range.	
F. 19 Notes	Same tracts list	[illegible]	[illegible]	[illegible]	[illegible]
Fg. 20 of Notes	" " "	[illegible]	[illegible]	[illegible]	[illegible]
"	" " "	[illegible]	[illegible]	[illegible]	[illegible]
"	" " "	[illegible]	[illegible]	[illegible]	[illegible]
"	" " "	[illegible]	[illegible]	[illegible]	[illegible]
Fg. 1 & 23 of Notes	" " "	[illegible]	[illegible]	[illegible]	[illegible]
" "	" " "	[illegible]	[illegible]	[illegible]	[illegible]
" "	" " "	[illegible]	[illegible]	[illegible]	[illegible]
" "	" " "	[illegible]	[illegible]	[illegible]	[illegible]
" "	" " "	[illegible]	[illegible]	[illegible]	[illegible]
Fgs. 2 & 24 of Notes	All the firm lands taken in [illegible] have been taken for swamp lands by R. R.	[illegible]	[illegible]	[illegible]	[illegible]
Fg. 21 of Notes	All of	[illegible]	[illegible]	[illegible]	[illegible]
" "	"	[illegible]	[illegible]	[illegible]	[illegible]
" "	W ½ of sw	[illegible]	[illegible]	[illegible]	[illegible]
" "	Lot 1	[illegible]	[illegible]	[illegible]	[illegible]
" "	" 12; Lots 10 & 11 & se se	[illegible]	[illegible]	[illegible]	[illegible]
" "	All of	[illegible]	[illegible]	[illegible]	[illegible]
" "	N ½ & sw ¼	[illegible]	[illegible]	[illegible]	[illegible]
" "	Se ¼ [illegible] & ne ¼, sw ¼ & sw	[illegible]	[illegible]	[illegible]	[illegible]
" "	E ½, Lots 1 & 2 e ½ sw ¼ Lot 3 ne sw & n ½ se	[illegible]	[illegible]	[illegible]	[illegible]
" "	Ne ¼, nw ¼, & ½ sw	[illegible]	[illegible]	[illegible]	[illegible]
" "	Ne nw	[illegible]	[illegible]	[illegible]	[illegible]
" "	All of	[illegible]	[illegible]	[illegible]	[illegible]
" "	" "	[illegible]	[illegible]	[illegible]	[illegible]
" "	Lots 1, 2, 3 & 4	[illegible]	[illegible]	[illegible]	[illegible]
" "	" 1 & 2, e ½ ne ¼	[illegible]	[illegible]	[illegible]	[illegible]
" "	" 3 & 4, e ½ sw se	[illegible]	[illegible]	[illegible]	[illegible]
" "	N ½ sw & n ½ se	[illegible]	[illegible]	[illegible]	[illegible]
" "	All sw	[illegible]	[illegible]	[illegible]	[illegible]
" "	All of	[illegible]	[illegible]	[illegible]	[illegible]
" "	Lot 1	[illegible]	[illegible]	[illegible]	[illegible]
" "	Frl n ½	[illegible]	[illegible]	[illegible]	[illegible]
" "	Sw ¼	[illegible]	[illegible]	[illegible]	[illegible]
" "	Lot 3	[illegible]	[illegible]	[illegible]	[illegible]

Railroad List.

	PARTS OF SECTIONS.	Section	Town.	Range		PARTS OF SECTIONS.	Section	Town.	Range	LIST.
s	None taken for	..	...	..		S ½ of nw & n ½ of sw	7	45	15	
Notes	“ “ “	..	...	..		W ½	7	46	15	
	“ “ “	..	...	..		W ½	19	“	“	
	“ “ “	..	...	..		N ½ of nw, se of nw, ne of sw & s ½ of sw	31	“	“	
	“ “ “	..	...	..		W ½ of sw	31	47	“	
of Notes	“ “ “	..	...	..		Sw of ne, ne of sw & s ½ sw	1	44	16	
“	“ “ “	..	...	..		N ½ of ne, s ½ of ne & se of se & n ½ of nw	3	“	“	
“	“ “ “	..	...	..		S ½ of ne, nw ¼, n ½ of se & ne of sw	5	“	“	
“	“ “ “	..	...	..		Nw of ne	7	“	“	
“	“ “ “	..	...	..		Ne of ne, s ½ of ne, ne of nw & s ½ of nw	11	“	“	
of Notes	All the lien lands taken in 45-16 have been taken for swamp lands by R. R	..	...	..			..	45	16	
Notes	All of	19	145	44	In lieu of	All of	1	46	16	19 “A”
“	“	15	143	“	“	“	3	“	“	18 “A”
“	W ½ of ne	7	132	40	“	N ½ of ne	5	“	“	“A” 9 “F”
“	Lot 1	11	“	41	“	Sw ne	5	“	“	“ “ “
“	“ 12; Lots 10 & 11 & se se	31	134	42	“	Nw sw, ne se & ne sw	7	“	“	“ “ “
“	All of	17	143	44	“	All of	9	“	“	18 “A”
“	N ½ & sw ¼	21	145	“	“	S ½ sec. & nw ¼	11	“	“	19 “A”
“	Se ¼ 21 & ne ¼ nw ¼ & sw	29	“	“	“	All of	15	“	“	“ “
“	E ½, Lots 1 & 2 e ½ nw ¼ Lot 3 ne sw & n ½ se	19 21	143 “	“ “	“	N ½, sw ¼, ne se & s ½ se	17	“	“	18 “A”
“	Ne ¼, nw ¼, n ½ sw	21	“	“	“	Ne ¼, e ½ nw & e ½ sw, Frl n ½ nw & nw sw	19	“	“	“ “
“	Ne nw	23	“	“	“	Frl sw sw	19	“	“	“ “
“	All of	31	145	“	“	All of	21	“	“	19 “A”
“	“ “	33	“	“	“	“ “	23	“	“	“ “
“	Lots 1, 2, 3 & 4	1	144	45	“	Ne ¼	25	“	“	“ “
“	“ 1 & 2, s ½ ne ¼	3	“	“	“	Nw ¼	“	“	“	“ “
“	“ 3 & 4, s ½ nw se	3	“	“	“	Sw ¼	“	“	“	“ “
“	N ½ sw & n ½ ne	3	“	“	“	Se ¼	“	“	“	“ “
“	All sec	5	“	“	“	All sec	27	“	“	“ “
“	All of	1	145	“	“	Sec.	29	“	“	“ “
“	Lot 1	7	144	“	“	W ½ sw	31	“	“	“ “
“	Frl n ½	3	145	“	“	E ½	“	“	“	“ “
“	Sw ¼	3	“	“	“	E ½ nw & e ½ sw	“	“	“	“ “
“	Lot 2	7	“	“	“	W ½ sw	“	“	“	“ “

	PARTS OF SECTIONS.	Section	Town.	Range		PARTS OF SECTIONS.	Section	Town.	Range	LIST.
Pg. 11 of Notes....	Se ¼	3	145	45	In lieu of..........	Ne ¼	33	46	16	19 "A"
" "	Frl ne	5	"	"	"	Nw ¼	"	"	"	" "
" "	" nw	5	"	"	"	Ne sw, s ½ sw & nw se	"	"	"	" "
" "	E ½ nw	7	"	"	"	S ½ se	"	"	"	" "
" "	Se ¼	29	"	44	"	Ne ¼	35	"	"	" "
" "	S ½	5	"	45	"	W ½	"	"	"	" "
" "	E ½ sw	7	"	"	"	N ½ se	"	"	"	" "
Pg. 4 of Notes.....	No lieu taken for tracts in	..	...	..	....	....	..	44	17	....
Pgs. 3 & 21 of Notes	....	..	...	..	....	....	..	45	17	....
" "	Nw sw, e ½ sw & se ¼	25	145	43	480 acres—In lieu of	S ½ ne, sw nw, n ½ sw & n ½ se	1	"	"	13
" "	Sw se	31	146	"	— "	Lot 6	1	"	"	"
" "	N ½ ne & sw ¼	27	145	"	240 acres— "	Se nw, se se & Lots 1, 2, 3 & 4	1	"	"	"
" "	E ½ ne, sw ne & sw ¼	29	"	"	280 " — "	S ½ se Sec. 3, nw nw & ne ¼	11	"	"	"
" "	N ½ & n ½ of s ½	33	"	"	480 " — "	W ½ sw, w ½ se	11	"	"	"
						Se ¼, e ½ ne & e ½ sw ¼	13	"	"	"
" "	Ne ne & sw ¼	15	"	"	280 " — "	Nw sw & sw sw	13	"	"	"
						Ne ne & sw	15	"	"	"
Pg. 22 of Notes....	Sw ne & se ¼ & w ½	13	146	"	520 " — "	Se ne	15	"	"	"
						Sw & se	25	46	"	"
						E ½ ne & n ½ se	35	"	"	"
" "	Ne ¼ & e ½ nw	15	"	"	— "	Sw se	35	"	"	....
" "	Lots 1, 2, 3 & 4	5	53	21	121 " — "	Se ne & e ½ se	29	45	"	6 & 7
" "	Section	5	131	49	— "	E ½, e ½ of w ½ & nw nw	1	46	"	"
" "	"	17	"	"	— "	Section	3	"	"	6 & 7 Fargo
" "	S ½ nw, s ½ & Lots 1, 2, 3 & 4	3	132	"	— "	N ½ of sw ¼ & ne se	5	"	"	"
" "	Section & sw ne & e ½ nw	5 35	" "	" "	— "	N ½, e ½ sw & w ½ sw	7	"	"	"
" "	Section	9	"	"	In lieu of..........	N ½, sw, w ½ se & se se	9	"	"	"
" "	"	11	"	"	"	Section	11	"	"	"
" "	"	13	"	"	"	"	13	"	"	"
" "	"	15	"	"	"	"	15	"	"	"
" "	"	17	"	"	"	N ½ ne, sw ne, e ½ nw, n ½ sw & ne sw	17	"	"	"
" "	"	19	"	"	"	Section	19	"	"	"
" "	"	21	"	"	"	E ½ ne, s ½ sw & s ½ se	21	"	"	"
" "	"	31	"	"	"	S ½, ne, n ½ nw & se nw	23	"	"	"
" "	S ½	29	"	"	"	N ½	25	"	"	"

	PARTS OF SECTIONS.	Section	Town.	Range			PARTS OF SECTIONS.	Section	Town.	Range	LIST.
Pg. 22 of Notes....	Section	23	132	49	In lieu of..........		N ½, se, n ½ sw & sw sw	27	46	17	13
" "	"	25	"	"	"	....	Section	29	46	17	6 & 7 Fargo
" "	"	33	"	"	"	....	N ½, sw ¼ & n ½ se	31	"	"	"
" "	W ½ nw	35	"	"	"	....	S ½ se	31	"	"	"
" "	Section	27	"	"	"	....	S ½ & n ½ of n ½	33	"	"	"
" "	N ½ of	29	"	"	"	....	W ½ of	35	"	"	"
" "	N ½ of sw	35	"	"	"	....	W ½ of ne	35	"	"	"
Pg. 14 of Notes....	Sw ne	23	140	33	"	....	Se ne	5	49	19	20
" "	S ½ nw, nw nw & s ½ ne	"	"	"	"	....	Sw ne & Lots 2, 3 & 4	5	"	"	"
" "	Se sw	"	"	"	"	....	Nw se	5	"	"	"
" "	S ½ ne	25	"	"	"	....	E ½ se	5	"	"	"
" "	Sw nw	"	"	"	"	....	Ne ne	7	"	"	"
" "	Se nw	"	"	"	"	....	Nw ne	"	"	"	"
" "	Sw sw	"	"	"	"	....	Sw ne	"	"	"	"
" "	Ne se	"	"	"	"	....	Se ne	"	"	"	"
" "	Se se	"	"	"	"	....	Ne nw	"	"	"	"
" "	Sw ne	27	"	"	"	....	Se nw	"	"	"	"
" "	Nw ¼	"	"	"	"	....	Ne sw & Lots 2, 3 & 4	"	"	"	"
" "	W ½ sw	"	"	"	"	....	N ½ se	"	"	"	"
" "	Ne sw	"	"	"	"	....	Se sw	"	"	"	"
" "	Se sw & e ½ se	"	"	"	"	....	N ½ ne & se ne	9	"	"	"
" "	Se ne & Lot 1	29	"	"	"	....	Sw ne & se nw	"	"	"	"
" "	Lots 2, 3 & 4	"	"	"	"	....	Ne se	"	"	"	"
" "	Sw ne & s ½ nw	"	"	"	"	....	Ne nw & e ½ sw	"	"	"	"
" "	Se sw & sw se	"	"	"	"	....	S ½ ne	"	"	"	"
" "	Ne ne	31	"	"	"	....	Nw sw	15	"	"	"
" "	Nw ne	35	"	"	"	....	Ne se	17	"	"	"
" "	Se nw & n ½ sw	33	"	"	"	....	Ne ne & s ½ ne	"	"	"	"
" "	Sw ne	35	"	"	"	....	Nw se	"	"	"	"
" "	Ne nw	"	"	"	"	....	Sw ne	"	"	"	"
" "	Se nw	"	"	"	"	....	Se se	"	"	"	"
" "	N ½ se & sw se	33	"	"	"	....	N ½ se & sw se	"	"	"	"
" "	W ½ ne & w ½ se	31	"	"	"	....	Ne	19	"	"	"
" "	E ½ se	"	"	"	"	....	Ne nw & Lot 1	"	"	"	"
" "	Lots 1, 2, 3 & 4	"	"	"	"	....	Lots 2, 3 & 4	"	"	"	"
" "	Ne ¼	33	"	"	"	....	Se ¼	"	"	"	"

	PARTS OF SECTIONS.	Section	Town.	Range		PARTS OF SECTIONS.	Section	Town.	Range	LIST.
Pg. 14 of Notes....	Ne nw & w ½ nw	33	140	33	In lieu of..........	Se nw & e ½ sw	19	49	19	20
"	Nw nw	35	"	"	"	Sw ne	21	"	"	"
"	Sw ne & se nw	31	141	"	"	E ½ ne	"	"	"	"
"	Ne sw	35	140	"	"	Nw nw	"	"	"	"
"	Nw sw	"	"	"	"	Ne sw	"	"	"	"
"	Se sw	"	"	"	"	Se sw	"	"	"	"
"	Nw se	"	"	"	"	Nw se	"	"	"	"
"	Se ne	31	141	"	"	Sw se	"	"	"	"
"	Ne nw	"	"	"	"	Se sw	27	"	"	"
"	E ½ sw	"	"	"	"	S ½ ne	29	"	"	"
"	N ½ se	"	"	"	"	N ½ se	"	"	"	"
"	Lots 1, 2, 3 & 4	"	"	"	"	S½ nw & e ½ sw	"	"	"	"
"	" 5 & 6	"	"	"	"	S ½ se	"	"	"	"
"	Lot 1	33	"	"	"	Sw sw	"	"	"	"
"	Nw ne & Lots 1 & 2	1	139	34	"	Lots 1 & 2	31	"	"	"
"	Lot 4	1	"	"	"	Lot 3	"	"	"	"
"	" 6	33	141	33	"	Sw nw	33	"	"	"
"	Se sw	35	"	"	"	Ne se	"	"	"	"
"	Sw sw	"	"	"	"	Sw sw	"	"	"	"
Pg 9 of Notes....	W ½ nw & n ½ sw	15	42	16	"	Nw ¼	5	50	19	7
"	Ne ¼ & n ½ se	27	54	22	"	Nw se	5	"	"	14
"	W ½ ne, e ½ nw & w ½ se	29	54	22	"	N ½ sw & ne	5	"	"	"
					"	Ne ¼ & n ½ nw	7	"	"	"
					"	N ½ ne	9	"	"	20
"	E ½ ne & sw se & Lots 1, 3, 4, 5, 6, 7,8	19	53	23	"	S ½ se	11	51	19	These tracts not on your list.
					"	N ½ sw	13	"	"	
					"	Ne ne	15	"	"	
"	Nw sw	1	139	34	"	Se se	9	50	19	20
"	Nw ¼	1	"	"	"	S ½ ne ¼ & n ½ se	9	"	"	"
"	Sw sw	1	"	"	"	Nw nw	15	"	"	"
"	Se ¼	3	"	"	"	Lots 1, 2, 3	"	"	"	"
"	W ½ ne	3	"	"	"	Sw nw nw sw	"	"	"	"
"	E ½ nw	3	"	"	"	Lot 4 & sw sw	"	"	"	"
"	W ½ nw	3	"	"	"	S ½ ne	17	"	"	"
"	W ½ sw	3	"	"	"	N ½ se	"	"	"	"
"	Frl lots 1, 2, 3, 4, 6 & 7	5	"	"	"	S ½ se	"	"	"	"

	PARTS OF SECTIONS.	Section.	Town.	Range		PARTS OF SECTIONS.	Section	Town.	Range	LIST.
Pg. 9 of Notes....	Nw nw	5	139	34	In lieu of	Ne se	19	50	19	20
"	Lots 1, 2, 3, 4, 5, 6 & 7 & n ½ se & n ½ sw	3	53	23	"	Nw	9	"	"	"
						Lot 1	19	"	"	"
						N ½ ne, w ½ nw & n ½ sw	17	"	"	14
"	Lots 1, 3, 4, 5, & 6 & sw se & s ½ sw	5	"	"	"	Se nw, se sw	"	"	"	"
						W ½ ne, e ½ nw, Lot 2 & se ne	19	"	"	"
"	E ½ ne, sw ne, nw frl. ¼, se frl. ¼, Lot 3 & nw sw	9	"	"	"	Lots 3 & 4, ne sw, se sw	"	"	"	"
						E ½ sw, se ¼, Lot 4	7	51	"	Not on List but had to put Tp. in.
						N ½ w	9	"	"	
"	Sw nw	5	139	34	"	Ne ne	21	50	"	30
"	W ½ sw & se sw	5	"	"	"	W ½ ne & se ne	"	"	"	"
"	Supp'l "A" 9 e	11	132	41	"	Nw nw	"	"	"	"A" 9 E.
"	Lots 1 & 2	9	139	34	"	E ½ nw	"	"	"	20
"	Ne se	9	"	"	"	Sw nw	"	"	"	"
"	Ne ¼	9	"	"	"	Se ¼	"	"	"	"
"	N ½ ne & sw ne	9	"	"	"	Sw ¼	"	"	"	"
"	Frl. s ½	31	144	48	"	Lots 1, 2, 3 & 4, e ½ ne & e ½ se	27	"	"	"
"	N ½ nw	13	139	34	"	Nw nw & Lot 1	"	"	"	"A" 9 E.
"	"A" 9 e, nw se	11	132	41	"	Nw nw	"	"	"	"
"	Nw ¼	11	139	34	"	Ne ¼	29	"	"	20
"	Sw ¼	"	"	"	"	Nw ¼	"	"	"	"
"	Lot 2	"	"	"	"	Nw se	"	"	"	"
"	Se ne & ne se	"	"	"	"	S ½ se	"	"	"	"
"	W ½ se & se se	"	"	"	"	Se sw & n ½ sw	"	"	"	"
"	Ne ne	3	53	14	40 acres—In lieu of	Lot 1	31	"	"	33—72 acres—10.
"	Nw nw	3	"	"	In lieu of	Lot 4 or nw nw	"	"	"	35.67 "—"
Pg. 12 of Notes....	Sw ¼	25	140	34	"	S ½ ne & Lots 1 & 2	3	48	20	20
"	Se ¼	"	"	"	"	Lots 3, 4, 5 & 6	3	"	"	"
"	Nw nw	"	"	"	"	Se nw	3	"	"	"
"	N ½ ne & se se	27	"	"	"	E ½ sw & Lot 7	3	"	"	"
"	Sw ne	"	"	"	"	Nw se	3	"	"	"
"	S ½ nw	"	"	"	"	E ½ se	3	"	"	"
"	Ne nw	"	"	"	"	Sw se	3	"	"	"
"	N ½ sw	"	"	"	"	Sw ne se nw	5	"	"	"
"	S ½ sw	"	"	"	"	Sw nw & Lot 4	5	"	"	"
"	Se ¼	"	"	"	"	Sw ¼	5	"	"	"

Railroad List.

	PARTS OF SECTIONS.	Section	Town.	Range		PARTS OF SECTIONS.	Section	Town.	Range	LIST.
g 12 of Notes....	E ½ sw	31	140	34	In lieu of	W ½ se	5	48	20	20
"	Ne ¼	31	"	"	"	Ne ¼	7	"	"	"
"	W ½ sw & Lot 2	29	"	"	"	E ½ nw & Lot 1	7	"	"	"
"	N ½ nw & sw nw	31	"	"	"	W ½ se & se se	7	"	"	"
"	W ½ sw & Lot 4	29	"	"	"	Ne sw & Lots 2 & 3	7	"	"	"
"	Se sw & Lot 5	"	"	"	"	Se sw & Lot 4	7	"	"	"
"	W ½ sw	31	"	"	"	W ½ nw	9	"	"	"
"	Se ¼	"	"	"	"	E ½ se, sw se & Lot 5	9	"	"	"
"	Lots 2 & 3	33	"	"	"	E ½ sw	9	"	"	"
"	Ne ¼	"	"	"	"	Lots 2, 3 & 4 & nw sw	9	"	"	"
"	Lot 1	"	"	"	"	Lot 1	9	"	"	"
"	Ne nw	7	141	"	"	" 1	17	"	"	"
"	Ne ¼ & ne se	7	"	"	"	E ½ ne, Lots 2, 3 & 4	"	"	"	"
"	N ½ ne	17	"	"	"	N ½ se	"	"	"	"
"	S ½ ne	"	"	"	"	S ½ se	"	"	"	"
"	Lots 1 & 2	"	"	"	"	Lot 5 & sw sw	"	"	"	"
"	Lot 3	"	"	"	"	Se sw	"	"	"	"
"	E ½ nw sw nw	"	"	"	"	E ½ ne & sw ne	19	"	"	"
"	Lot 4	19	140	"	"	Se nw	"	"	"	"
"	Sw ¼	17	141	"	"	Se	"	"	"	"
"	Ne se & Lot 1	19	"	"	"	E ½ sw	"	"	"	"
"	Lots 2 & 3	"	"	"	"	Lots 3 & 4	"	"	"	"
"	Lot 8 & sw se	"	"	"	"	Ne nw & Lot 2	"	"	"	"
"	N ½ se	29	"	"	"	W ½ nw	29	"	"	"
"	Ne ne	31	"	"	"	Se se	"	"	"	"
"	Se se	29	"	"	"	Sw sw	"	"	"	"
"	Ne sw	"	"	"	"	Ne ne	"	"	"	"
"	Se ne	31	"	"	"	Ne ne	31	"	"	"
"	Nw ne & Lots 1 & 2	"	"	"	"	W ½ ne & se ne	"	"	"	"
"	Ne se & Lot 3	"	"	"	"	Lot 1	"	"	"	"
"	Se se & Lots 4, 5 & 6	"	"	"	"	Lots 2 & 3	"	"	"	"
"	Nw sw	33 or 31	"	"	"	Lot 4	"	"	"	"
"	Nw ¼	33	"	"	"	Se ¼	"	"	"	"
"	S ½ ne & Lots 2 & 3	"	"	"	"	E ½ nw & e ½ sw	"	"	"	"
Pg. 13 of Notes....	Se sw & se ¼	31	142	"	"	S ½ ne & Lots 1, 2 & 3	1	49	20	"
Pg. 13 of Notes....	E ½ ne	1	139	35	"	Lot 4 & sw nw	1	"	"	"

	PARTS OF SECTIONS.	Section.	Town.	Range.		PARTS OF SECTIONS.	Section.	Town.	Range.	[illegible]
Pg. 13 of Notes....	Lot 4	[illegible]	140	30	In lieu of	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
"	S ½ nw & se sw	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	Se nw & Lots 1 & 2	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	Sw sw	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	Lot 3	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	Lots 5, 6 & 7	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	Nw sw	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	S ½ nw	[illegible]	141	[illegible]	"	[illegible]	[illegible]	"	"	[illegible]
"	N ½ nw	"	"	"	"	[illegible]	[illegible]	"	"	"
"	S ½ sw	"	"	"	"	[illegible]	[illegible]	"	"	"
"	N ½ sw	"	"	"	"	[illegible]	[illegible]	"	"	"
"	Sw se	"	"	"	"	[illegible]	[illegible]	"	"	"
"	Se se	"	"	"	"	[illegible]	[illegible]	"	"	"
"	S ½ ne, Lots 1 & 2; S ½ nw, Lots 3 & 4	[illegible]	140	"	"	[illegible]	[illegible]	"	"	"
"	Sw ¼	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	Lot 2	[illegible]	"	[illegible]	"	[illegible]	[illegible]	"	"	"
"	S ½ ne & Lot 1	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	N ½ se & Lot 4	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	Section	[illegible]	[illegible]	[illegible]	"	[illegible]	[illegible]	"	"	[illegible]
"	Se nw	[illegible]	[illegible]	[illegible]	"	[illegible]	[illegible]	"	"	[illegible]
"	Sw sw	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	Se sw	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	N ½ se & sw se	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	Se se	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	Lot 1	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	S ½ ne & Lot 2	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	Lots 3, 4 & 5	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	Lot 1	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	Sw ne	"	"	"	"	[illegible]	[illegible]	"	"	"
"	Lot 6	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	Lots 7 & 8	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	E ½ nw	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	Sw sw & Lots 9, 10, 11 & 12	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	Ne ¼	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"
"	Ne sw & n ½ se	[illegible]	[illegible]	[illegible]	"	[illegible]	[illegible]	"	"	[illegible]
"	Nw ne	[illegible]	"	"	"	[illegible]	[illegible]	"	"	"

Railroad List.

	PARTS OF SECTIONS.	Section	Town.	Range		PARTS OF SECTIONS.	Section	Town.	Range	LIST.
Pg. 13 of Notes....	Nw 4	15	140	35	In lieu of..........	Ne ¼	25	49	20	20
"	S ½ ne	17	"	"	"	Ne ½ nw	"	"	"	"
"	S ½ nw	"	"	"	"	N ½ se	"	"	"	"
"	N ½ sw	"	"	"	"	S ½ se	"	"	"	"
"	Se ne	15	"	"	"	Sw sw	"	"	"	"
"	N ½ ne & n ½ nw	17	"	"	"	S ½ nw & n ½ sw	"	"	"	"
"	S ½ sw	"	"	"	"	N ½ ne	27	"	"	"
"	E ½ nw	19	"	"	"	S ½ ne	"	"	"	"
"	Ne ne	25	"	"	"	Se nw	"	"	"	"
"	Se ¼	17	"	"	"	Se ¼	"	"	"	"
"	Ne ¼	19	"	"	"	Sw ¼	"	"	"	"
"	W ½ se & se se	15	53	17	"	Ne nw & w ½ nw	"	"	"	10
"	S ½ ne	25	140	35	"	S ½ nw	29	"	"	20
"	Se ¼	"	"	"	"	E ½ sw & w ½ se	"	"	"	"
"	Lot 1	1	141	"	"	Ne se	"	"	"	"
"	Se sw	25	140	"	"	Sw sw	"	"	"	"
"	Se ne	15	53	17	"	Se se	"	"	"	10
"	W ½ nw, n ½ sw, se sw & w ½ se	"	"	"	"	Ne ¼, n ½ nw & nw sw	"	"	"	"
"	N ½ se	7	140	35	"	E ½ se	31	"	"	20
"	Lots 1, 2 & 3	7	"	"	"	Lots 4 & 5	"	"	"	"
"	**Lot 4**	7	"	"	"	Lot 8	"	"	"	"
"	Ne sw	7	"	"	"	" 6	"	"	"	"
"	Se sw	7	"	"	"	" 7	"	"	"	"
"	S ½ se	7	"	"	"	Lots 1 & 2	33	"	"	"
"	Lots 1, 2 & 3	9	"	"	"	Lot 5	"	"	"	"
"	Sw nw	9	"	"	"	Sw nw	"	"	"	"
"	Se se & Lots 4 & 6	9	"	"	"	W ½ sw & se sw	"	"	"	"
"	Lot 7	9	"	"	"	Lot 6	"	"	"	"
"	Lots 1, 2, 3 & 4	11	"	"	"	Ne sw & Lot 7	"	"	"	"
"	Ne ne	13	"	"	"	Lot 8	"	"	"	"
"	W ½ ne & se ne	"	"	"	"	N ½ ne & se ne	35	"	"	"
"	S ½ nw & ne nw	"	"	"	"	Se ne & e ½ nw	"	"	"	"
"	Se ¼	"	"	"	"	Se ¼	"	"	"	"
"	Sw ¼	"	"	"	"	Sw ¼	"	"	"	"
Pg. 16 Notes........	S ½ ne & Lots 2, 3 & 4	1	141	"	"	S ½ ne & Lots 1, 2 & 3	1	45	21	"
"	S ½ nw	1	"	"	"	Sw nw & Lot 4	1	"	"	"

	PARTS OF SECTIONS.	Section	Town.	Range		PARTS OF SECTIONS.	Section	Town.	Range	LIST.
Pg. 16 Notes	N ½ se	1	141	35	In lieu of	N ½ se	1	45	21	20
"	Sw se	1	"	"	"	Se se	1	"	"	"
"	N ½ sw	1	"	"	"	Se nw & ne sw	1	"	"	"
"	S ½ sw	1	"	"	"	W ½ sw	1	"	"	"
"	Se se	1	"	"	"	Lot 2	3	"	"	"
"	Lots 3, 4, 5, 6, 7, 8, 9 10 & 11	3	"	"	"	S ½ ne, s ½ nw & Lots 3 & 4	3	"	"	"
"	Se ¼	3	"	"	"	N ½ sw & n ½ se	3	"	"	"
"	Se ne	11	"	"	"	Se ne	5	"	"	"
"	Nw sw	"	"	"	"	Sw ne	5	"	"	"
"	N ½ nw	"	"	"	"	S ½ nw	5	"	"	"
"	N ½ sw	17	"	"	"	E ½ se	5	"	"	"
"	Sw sw & Lot 3	11	"	"	"	Se sw & sw se	5	"	"	"
"	S ½ nw	"	"	"	"	N ½ sw	5	"	"	"
"	Ne sw	"	"	"	"	Sw sw	5	"	"	"
"	W ½ sw & se sw	9	"	"	"	N ½ se & sw ne	7	"	"	"
"	N ½ ne	11	"	"	"	N ½ ne	7	"	"	"
"	Sw ne	11	"	"	"	Se ne	7	"	"	"
"	Sw nw	3	"	"	"	Ne nw	7	"	"	"
"	Lots 1, 2 & 5	5	"	"	"	Lots 1 & 2	7	"	"	"
"	Lot 3	5	"	"	"	Se nw	7	"	"	"
"	N ½ nw & sw nw	9	"	"	"	Se sw & s ½ se	7	"	"	"
"	Lots 1, 2, 3 & 4	9	"	"	"	Ne sw & Lots 3 & 4	7	"	"	"
"	All Section	13	"	"	"	All Section	9	"	"	"
"	Lot 1	15	"	"	"	Ne ne	11	"	"	"
"	Lots 2, 3, 4, 5, 6, 7 & 8	"	"	"	"	S ½ ne & se ¼	"	"	"	"
"	E ½ ne & ne se	"	"	"	"	S ½ nw & se sw	"	"	"	"
"	Se se	"	"	"	"	Nw sw	"	"	"	"
"	N ½ ne	17	"	"	"	S ½ sw	"	"	"	"
"	Ne nw	"	"	"	"	Nw nw	13	"	"	10
"	Lots 1, 2 & 3	25	132	54	"	Ne ¼	"	"	"	6
"	Ne nw & s ½ nw	1	147	"	"	Ne nw & s ½ nw	"	"	"	"
"	S ½ nw & nw se	17	141	35	"	Ne ¼	15	"	"	20
"	Sw se	"	"	"	"	Ne nw	"	"	"	"
"	Sw ne	19	"	"	"	Nw nw	"	"	"	"
"	Lots 3 & 4	"	"	"	"	Sw nw	"	"	"	"
"	Se nw	21	"	"	"	Ne se	"	"	"	"

Railroad List.

	PARTS OF SECTIONS.	Section	Town.	Range		PARTS OF SECTIONS.	Section	Town.	Range	LIST.
Pg. 16 Notes	Ne sw	21	141	35	In lieu of	Nw se	15	45	21	20
"	W ½ sw	"	"	"	"	S ½ se	"	"	"	"
"	N ½ ne & ne nw	"	"	"	"	Se nw & n ½ sw	"	"	"	"
"	Nw nw	"	"	"	"	Sw sw	"	"	"	"
"	Sw nw	"	"	"	"	Se sw	"	"	"	"
"	Se sw	"	"	"	"	Ne ne	17	"	"	"
"	Sw se	"	"	"	"	Nw ne	"	"	"	"
"	Se se	"	"	"	"	Se ne	"	"	"	"
"	E ½ ne & Lot 1	23	"	"	"	Sw ne & e ½ nw	"	"	"	"
"	Lot 2	"	"	"	"	Nw nw	"	"	"	"
"	W ½ ne & e ½ nw	"	"	"	"	Se ¼	"	"	"	"
"	Nw nw & Lots 3 & 4	"	"	"	"	Sw nw & n ½ sw	"	"	"	"
"	Lots 1, 2 & 3	25	"	"	"	S ½ sw	"	"	"	"
"	S ½ ne, nw ne & Lot 1	27	"	"	"	Ne ¼	19	"	"	"
"	Se ¼	"	"	"	"	Lots 1 & 2 & E ½ nw	"	"	"	"
"	Ne sw	"	"	"	"	Nw se	"	"	"	"
"	Se ne	29	"	"	"	Ne se	"	"	"	"
"	Ne nw	27	"	"	"	Ne sw	"	"	"	"
"	W ½ ne & se nw	29	"	"	"	N ½ ne & ne nw	21	"	"	"
"	Ne sw	"	"	"	"	Nw nw	"	"	"	"
Pg. 10 Notes	N ½ ne	31	"	"	"	S ½ nw	1	46	"	"
"	Lot 1	29	"	"	"	Lot 3	1	"	"	"
"	Se ¼	"	"	"	"	Sw ¼	1	"	"	"
"	Se nw & Lots 1 & 2	31	"	"	"	S ½ ne & Lot 1	3	"	"	"
"	W ½ se & se se	"	"	"	"	S ½ nw & Lot 4	3	"	"	"
"	E ½ sw & Lots 3 & 4	"	"	"	"	Se ¼	3	"	"	"
"	E ½ ne & sw ne	33	"	"	"	N ½ sw & sw sw	3	"	"	"
"	Se nw	"	"	"	"	Se sw	3	"	"	"
"	Lots 2, 3, 4 & 5	7	142	"	"	Lots 1 & 2 & s ½ ne	5	"	"	"
"	Lot 6	7	"	"	"	Lot 3	5	"	"	"
"	" 9	7	"	"	"	" 4	5	"	"	"
"	Lots 7 & 8	7	"	"	"	S ½ nw	5	"	"	"
"	Ne sw	9	"	"	"	Ne se	5	"	"	"
"	E ½ se	15	"	"	"	W ½ se	5	"	"	"
"	Se sw	17	"	"	"	Se se	5	"	"	"
"	Ne se	7	"	"	"	Ne sw	5	"	"	"

	PARTS OF SECTIONS.	Section.	Town.	Range.		PARTS OF SECTIONS.	Section.	Town.	Range.	LIST.
Pg. 10 Notes.......	N ½ nw & sw nw	9	142	35	In lieu of..........	W ½ sw & se sw	5	46	21	20
"	N ½ se & Lots 1 & 2	9	"	"	"	E ½ sw & Lot 3	7	"	"	"
"	E ½ sw & nw se	15	"	"	"	W ½ se & se se	7	"	"	"
"	Nw nw	"	"	"	"	Se se	7	"	"	"
"	Lot 3	9	"	"	"	Lot 4	7	"	"	"
"	N ½ sw	33	141	"	"	N ½ ne	9	"	"	"
"	S ½ sw & sw se	"	"	"	"	S ½ ne & ne nw	9	"	"	"
"	N ½ se & se se	"	"	"	"	W ½ nw & se nw	9	"	"	"
"	E ½ nw & sw nw	35	"	"	"	N ½ se & sw se	9	"	"	"
"	Ne sw	"	"	"	"	Se se	9	"	"	"
"	Ne ¼	"	"	"	"	Sw ¼	9	"	"	"
"	S ½ se, w ½ sw & se sw	"	"	"	"	Ne ¼ & ne nw	11	"	"	"
"	Se nw & Lot 3	5	142	"	"	W ½ nw	"	"	"	"
"	Se ¼	5	"	"	"	Se ¼	"	"	"	"
"	N ½ sw & se sw	5	"	"	"	Se nw & n ½ sw	"	"	"	"
"	Ne ne & Lot 1	7	"	"	"	S ½ sw	"	"	"	"
"	W ½ se	17	"	"	"	N ½ ne	13	"	"	"
"	Ne ¼	21	"	"	"	S ½ ne & n ½ se	"	"	"	"
"	W ½ nw & se nw	"	"	"	"	S ½ se & se sw	"	"	"	"
"	N ½ sw & nw se	"	"	"	"	W ½ sw & ne sw	"	"	"	"
"	E ½ se & se se	"	"	"	"	N ½ se & se se	15	"	"	"
"	Lots 2, 3, 4 & 5	23	"	"	"	Sw ne & e ½ nw	"	"	"	"
"	N ½ nw	25	"	"	"	W ½ nw	"	"	"	"
"	Sw ¼ & se ¼	23	"	"	"	Sw ¼ & se ¼	"	"	"	"
"	Nw ¼	27	"	"	"	Se ¼	17	"	"	"
"	S ½ sw & s ½	25	"	"	"	N ½ & n ½ sw	"	"	"	"
"	E ½ ne	27	"	"	"	S ½ sw	"	"	"	"
"	N ½ sw & n ½ se	27	"	"	"	Ne ¼	19	"	"	"
"	S ½ ne & s ½ sw	33	"	"	"	Lots 2, 3 & 4	"	"	"	"
"	Se se	27	"	"	"	Ne nw	"	"	"	"
"	Ne ne	33	"	"	"	Lot 1	"	"	"	"
"	E ½ nw & Lots 1 & 2	31	"	"	"	Se ¼	"	"	"	"
"	N ½ ne	"	"	"	"	Se nw & ne sw	"	"	"	"
"	Ne sw	33	"	"	"	Se sw	"	"	"	"
"	W ½ sw & se sw	"	"	"	"	N ½ ne & se ne	21	"	"	"
"	Sw se	35	"	"	"	Sw ne	21	"	"	"

Railroad List.

	PARTS OF SECTIONS.	Section	Town.	Range		PARTS OF SECTIONS.	Section	Town.	Range	LIST.
Pg. 10 Notes	Se ¼	33	142	35	In lieu of	Nw ¼	21	46	21	20
"	Se se	35	"	"	"	Ne se	"	"	"	"
"	N ½ se & se se	31	143	"	"	W ½ se & se se	"	"	"	"
"	N ½ ne	35	142	"	"	N ½ sw	"	"	"	"
"	Se sw	"	"	"	"	Sw sw	"	"	"	"
"	Ne se	"	"	"	"	Se sw	"	"	"	"
"	Lot 4	31	143	"	"	Sw ne	23	"	"	"
"	Sw se	"	"	"	"	Nw ne	"	"	"	"
"	Lots 1, 2 & 3	"	"	"	"	Nw ¼	"	"	"	"
"	" 1, 2, 3, 4, 6 & 7	5	139	34	"	Ne sw	"	"	"	"
Pg 8 Notes	" 3 & 4, ne ¼ & se ¼	7	145	45	"	N ½ sw, s ½ sw & se ¼				
"	Sw ¼					Lots 2, 3 & 4 & s ½ ne, s ½ nw	3	47	21	19 "A"
"	S ½	17	"	"	"	S ½	5	"	"	"
"	S ½ ne, ne ne	19	"	"	"	S ½ ne & ne se	7	"	"	"
"	Nw .ne & ne nw	"	"	"	"	W ½ se	7	"	"	"
"	S ½ nw	17	"	"	"	N ½ ne	7	"	"	"
"	Ne se	9	"	"	"	Ne sw	9	"	"	"
"	Nw se & s ½ se	9	"	"	"	Nw sw & s ½ sw	9	"	"	"
"	Ne ¼	11	"	"	"	Se ¼	9	"	"	"
"	N ½	9	"	"	"	N ½	9	"	"	"
"	Section	5	147	54	"	Section	11	"	"	6 & 7
"	Nw ¼	11	145	45	"	Ne ¼	15	"	"	19 "A"
"	N ½ sw & sw sw	"	"	"	"	N ½ nw & sw nw	"	"	"	"
"	Se sw & w ½ se	"	"	"	"	N ½ se & sw se	"	"	"	"
"	S ½ se	"	"	"	"	N½ nw	"	"	"	"
"	Ne ne	13	"	"	"	Se nw	"	"	"	"
"	S ½ ne	"	"	"	"	S ½ sw	"	"	"	"
"	N ½ sw	"	"	"	"	N ½ sw	17	"	"	"
"	S ½ sw & se ¼	"	"	"	"	S ½ sw & se ¼	"	"	"	"
"	Ne ¼	17	"	"	"	Se ¼	19	"	"	"
"	S ½ sw & se ¼	15	"	"	"	Ne ¼ & e ½ nw	"	"	"	"
"	N ½ nw	17	"	"	"	E ½ sw	"	"	"	"
"	Lots 1, 2, 3 & 4	19	"	"	"	Lots 1, 2, 3 & 4	"	"	"	"
"	Nw ne	13	"	"	"	Se se	21	"	"	"
"	Nw ¼	"	"	"	"	Ne ¼	"	"	"	"
"	Ne ¼	15	"	"	"	Nw ¼	"	"	"	"

	PARTS OF SECTIONS.	Section	Town.	Range		PARTS OF SECTIONS.	Section	Town.	Range	LIST.
Pg. 8 Notes........	N ½ nw..	15	145	45	In lieu of..........	N ½ se..	21	47	21	19 "A"
"	S ½ nw & n ½ sw..	"	"	"	"	Sw ¼..	"	"	"	"
"	Ne ne	25	54	15						
"	Sw nw	27	"	"						
"	Ne sw & sw sw..	29	"	"						
"	Ne nw & sw sw..	31	"	"	"	All of Section..	25	"	"	15 B
"	Lots 5, 6 & 7..	15	55	"						
"	E ½ ne & ne se..	17	"	"						
"	E ½ ne, sw ne, se nw, w ½ nw, se ¼ & n ½ sw	19	"	"						
"										
"	Sw ne, n ½ ne & nw sw..	15	54	"	....	S ½	29	"	"	"
"	N ½ ne, nw nw & s ½ se..	17	"	"	....	Lots 1, 3 & 4, e ½ sw, w ½ se & se se..........	31	"	"	"
"	N ½ ne, nw se, n ½ sw & Lots 5 & 8..........	19	"	"	"	W ½ ne & nw..	33	"	"	"
"	Sw ne, n ½ ne, se se, Lots 1, 3, 4 & 5 & e ½ sw & sw sw..	21	"	"	....	Sw ¼ & sw se..	35	"	"	"
"	Lots 10, 11 & 12..	21	54	23	"	Nw ne & se ne..	29	"	"	14
"	Se ne	29	"	"	"	Ne nw	"	"	"	"
"	Ne ne	"	"	"	"	nw nw	"	"	"	"
"	N ½ se..	31	"	"	"	S ½ nw..	"	"	"	"
"	Lots 1, 2, 3 & 7..	33	"	"	"	S ½ nw & ne se..	31	"	"	"
"	Sw ne	35	"	"	"	Ne ne	"	"	"	"
"	S ½ nw..	"	"	"	"	W ½ ne..	"	"	"	"
"	Ne se	"	"	"	"	Se ne	"	"	"	"
Pg. 5 of Notes......	The notes say you know where the lieu lands are in except the ne of se 29, which is swamp.				....	....	..	48	21	See pg. 5 of notes
Pg. 26 of Notes.....	No lien taken in..				....	....	..	49	21......................	
Pg. 6 of Notes.....	" "				In lieu of..........	....	..	45	22......................	
Pg. 7 "	W ½ nw & n ½ sw..	15	146	43	"	Ne ¼	25	47	"	16
" "	S ½ se & s ½ sw..	"	"	"	"	Nw ¼	"	"	"	"
" "	Nw ¼	17	"	"	"	E ½ sw & w ½ se..	"	"	"	"
Pg. 27 of Notes....	The lien taken by R. R. in..				....	....	..	45	23 is for swamp.	
Pg. 17 "	No " " "				....	....	..	50	26......................	
" 25 "	Se sw or sw sw..	3	53	25	In lieu of..........	Ne ne	7	42	29	12 "A"
" 18 "	No lien taken by R. R. in..				....	....	..	46	29......................	
" 15 "	I fail to find any record of the lieu by subdivisions, but the tract book says it is in 7-138-33.	7	138	33	In lieu of..........	Sw nw, n ½ sw & se sw..	13	42	30	

[illegible]

Duly Certified. Offered in evidence at page [illegible] this record.

[illegible]

[illegible]

Lands lying West of Thomson's Junction [illegible] from Company's line.

[illegible]

Sec. [illegible]	[illegible]	[illegible]
Sec. [illegible]	[illegible]	[illegible]
Sec. [illegible]	[illegible]	[illegible]
Sec. [illegible]	[illegible]	[illegible]
Sec. [illegible]	[illegible]	[illegible]
Sec. [illegible]	[illegible]	[illegible]
Sec. [illegible]	[illegible]	[illegible]
Sec. [illegible]	[illegible]	[illegible]
		[illegible]

Northern Pacific R. R. Minnesota.
20 mile limits [illegible]

Lands included in N. P. R. R. Co's list filed May [illegible] and designated by the Co. as the bases for [illegible] indemnity selections, but not included in Office Statement upon the grounds stated in remarks opposite each tract, and on that account not regarded as sufficient bases for [illegible] indemnity selections.

[illegible]

[illegible]

[illegible]

Northern Pacific R. R. Minnesota.
Act July 2, '64, Definite location [illegible]
West of Thomson's Junction—20 mile limits [illegible]

[illegible]

[illegible]

Northern Pacific R. R. Minnesota,
Act July 2, '64, Definite location Nov. 20, '71,
West of Thomson's Junction—20 mile limits N. P. also
20 mile limits L. S. & M.

ADJUSTMENT LIST 5. 4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
S ½ nw ¼ n ½ sw ¼ or sw nw ¼ nw sw ¼	7	45	15	113.49	L. S. & M. selection Jany. 16th 69, Appd. June 14th 69.
Nw ¼ & sw ¼	7	46	15	268.89	L. S. & M. selection Dec. 14th 67, Appd. Mch. 25th 68.
Nw ¼ & sw ¼	19	"	"	264.81	L. S. & M. selection Dec. 14th 67, Appd. Mch. 25th 68.

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Adjustment List 5. 4th Mer.

		N.	W.		
E ½ nw ¼ e ½ sw ¼ nw nw ¼ sw sw ¼	31	46	15	207.47	L. S. & M. selection, Dec. 14th, 67. Appd. Mch. 25th, 68.
W ½ sw ¼	31	46	15	54.64	L. S. & M. selection, Dec. 14th, 67. Appd. Mch. 25th, 68.
E ½ ne ¼ sw ne ¼ se nw ¼ ne sw ¼ w ½ se ¼	1	45	16	280.14	L. S. & M. selection, Jany. 16th, 69. Appd. June 14th, 69.
Nw ¼ & sw ¼ sw ne ¼ & se ¼	3	"	"	521.20	L. S. & M. selection, Jany 16th, 69. Appd. June 14th, 69.
Ne ne ¼ w ½ ne ¼ e ½ nw ¼ sw nw ¼ ne sw ¼ w ½ ¼ ne sw ¼ w ½ nw se ¼	5	"	"	478.56	L. S. & M. selection Jany 16th, 69. Appd. June 14th. 69.
Ne ne ¼ sw ne ¼ w ½ nw ¼ se nw ¼ sw ¼ nw se ¼	7	45	16	381.37	L. S. & M. selection Jany 16th, 69. Appd. June 14th, 69.
N ½ ne ¼ sw nw ¼ e ½ sw ¼ nw sw ¼ e ½ se ¼ nw se ¼	9	"	"	360	L. S. & M. selection Jan'y 16th. 69. Appd. June 14th. 69.
W ½ ne ¼ se ne ¼ e ½ sw ¼ e ½ nw ¼ n ½ se ¼	11	"	"	360	L. S. & M. selection Jany 16th. 69. Appd. June 14th. 69.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
W ½ ne ¼ se ne ¼ nw nw ¼	13	"	"	160	L. S. & M. selection Jany 16th, 69. Appd. June 14th, 69.
E ½ ne ¼ sw ne ¼ e ½ nw ¼ sw nw ¼ ne sw ¼ w ½ sw ¼ ne se ¼ w ½ se ¼	15	"	"	480	L. S. & M. selection Jany 16th, 69. Appd. June 14th, 69.
S ½ ne ¼ e ½ nw ¼ sw nw ¼ e ½ sw ¼ n ½ se ¼	17	"	"	360	L. S. & M. selection Jany 16th, 69. Appd. June 14th, 69.
Sw nw ¼ e ½ sw ¼ n ½ se ¼					

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Adjustment List 5. 4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
				N. W.	
All	1	46	16	640.97	L. S. & M. selection Dec. 14th 67 Appd. Mch. 25th 68
All	11	"	"	640	L. S. & M. selection Dec. 14th 67 Appd. Mch. 25th 68
Ne ¼ n ½ nw ¼ se nw ¼ e ½ sw ¼ sw sw ¼ se ¼	13	"	"	560	L. S. & M. selection Dec. 14th 67 Appd. Mch. 25th 68
All	15	"	"	640	L. S. & M. selection Dec. 14th 67 Appd. Mch. 25th 68
N ½ se ¼	19	"	"	80	L. S. & M. selection Dec. 14th 67 Appd. Mch. 25th 68
All	21	"	"	640	L. S. & M. selection Dec. 14th 67 Appd. Mch. 25th 68
All	23	"	"	640	L. S. & M. selection Dec. 14th 67 Appd. Mch. 25th 68
All	25	"	"	640	L. S. & M. selection Dec. 14th 67 Appd. Mch. 25th 68
All	27	46	16	640	L. S. & M. selection Dec. 14th 67 Appd. Mch. 25th 68
All	29	"	"	640	L. S. & M. selection Dec. 14th 67 Appd. Mch. 25th 68
All	31	"	"	595.51	L. S. & M. selection Dec. 14th 67 Appd. Mch. 25th 68
Ne sw ¼ s ½ sw ¼ ne ¼ & nw ¼ nw se ¼ s ½ se ¼	33	"	"	560	L. S. & M. selection Dec. 14th 67 Appd. Mch. 25th 68

Adjustment List 5. 4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼ & nw ¼ sw ¼ & n ½ se ¼	35	46	16	560	L. S. & M. selection Dec. 14th 67 Appd. Mch 25th 68
Ne ¼ & nw ¼ n ½ sw ¼ nw se ¼ e ½ se ¼ & lot 6	1	45	17	542.08	L. S. & M. selection Dec. 19th 70 Appd Apr. 28th 72
S ½ se ¼	3	"	"	80	L. S. & M. selection Dec. 19th 70 Appd Feb. 28th 72
Ne ¼ & nw nw ¼ w ½ sw ¼ w ½ se ¼	11	"	"	360	L. S. & M. selection Dec. 19th 70 Appd Feb. 28th 72
E ½ ne ¼ nw nw ¼ s ½ sw ¼ ne sw ¼ & se ¼	13	"	"	400	L. S. & M. selection Dec. 19th 70 Appd Feb. 28th 72
E ½ ne ¼ sw ¼	15	"	"		L. S. & M. selection Dec. 14th 67
Se ¼	15	"	"	400	Appd Mch 25th 68
Sw ¼ & se ¼	25	46	17	320	L. S & M. selection Dec. 14th 67 Appd Mch 25th 68
E ½ ne ¼ n ½ se ¼ sw se & Lot 1	35	"	"	225.75	L. S. & M. selection Dec. 14th 67 Appd Mch 25th 68
Nw ne ¼ s ½ ne ¼ n ½ nw ¼ nw se ¼ e ½ se ¼	5	49	19	358.97	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Se nw ¼	5	"	"	40	L. S. & M. selection Sept. 30th 72 Appd June 7th 73 also L. S. & M. selection June 29th 74
Ne ¼ e ½ nw ¼ sw nw ¼ sw ¼ n ½ se ¼	7	49	19	532.35	L. S. & M. selection Sept. 30th 72 Appd. June 7th 73
All	19	"	"	667.46	L. S. & M. selection Sept. 30th 72 Appd June 7th 73

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Adjustment List 5. 4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Sw sw ¼ & lot 5	3	50	19	87.52	L. S. & M. selection June 24th 75 Appd Sept. 25th 75
S ½ ne ¼ n ½ se ¼ se se ¼	9	"	"	200	L. S. & M. selection June 24th 75 Appd Sept. 25th 75
W ½ nw ¼ w ½ sw ¼ & lots 1, 2, 3, 4	15	"	"	365.12	L. S. & M. selection June 24th 75 Appd Sept. 25th 75
S ½ ne ¼ se ¼	17	"	"	240	L. S. & M. selection June 24th 75 Appd Sept. 25th 75
Ne se ¼ sw se ¼	19	"	"	80	L. S. & M. selection June 24th 75 Appd Sept. 25th 75
Ne ¼ & se ¼ Ne nw ¼ s ½ nw ¼ & sw ¼	21	"	"	600	L. S. & M. selection June 24th 75 Appd Sept. 25th 75
N ½ nw ¼	27	"	"	93.65	L. S. & M. selection June 24th 75 Appd Sept. 25th 75
Ne ¼ & nw ¼ n ½ sw ¼ se sw ¼ nw se ¼ s ½ se ¼	29	"	"	560	L. S. & M. selection June 24th 75 Appd Sept. 25th 75
Nw nw ¼	31	"	"	33.72	L. S. & M. selection June 24th 75 Appd Sept. 25th 75
Nw nw ¼	33	"	"	40	L. S. & M. selection June 24th 75 Appd Sept. 25th 75
All	3	48	20	619.35	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Sw ne ¼ nw nw ¼ s ½ nw ¼ sw ¼ w ½ se ¼	5	"	"	402.99	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Ne ¼ & nw ¼ sw ¼ w ½ se ¼ se se ¼	7	"	"	644	L. S. & M. selection Sept. 30th 72 Appd June 7th 73

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PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
Lots 1, 2, 3, 4, 5 w ½ nw ¼ nw sw ¼ e ½ sw ¼ sw se ¼ e ½ se ¼	9	48	20	491.95	L. S. & M. selection Sept. 30th 72
All	17	"	"	497.34	L. S. & M. selection Sept. 30th 72 Appd June 7th 73

Adjustment List 5. 4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
E ½ ne ¼ sw ne ¼ e ½ nw ¼ sw nw ¼ sw ¼ & se ¼	19	"	"	587	L. S. & M. selection Sept 30th 72 Appd June 7th 73
Ne ne ¼ w ½ nw ¼ sw sw ¼ se se ¼	29	"	"	200	L. S. & M. selection Sept 30th 72 Appd June 7th 73
All	31	"	"	665.98	L. S. & M. selection Sept 30th 72 Appd June 7th 73
All	1	49	20	636.80	L. S. & M. selection Sept 30th 72 Appd June 7th 73
Sw se ¼ se sw ¼	3	"	"	80	L. S. & M. selection Sept 30th 72 Appd June 7th 73
Se ne ¼ e ½ sw ¼ w ½ se ¼ se se ¼	9	"	"	240	L. S. & M. selection Sept 30th 72 Appd June 7th 73
Nw nw ¼ sw sw ¼	13	"	"	80	L. S. & M. selection Sept 30th 72 Appd June 7th 73
S ½ ne ¼ n ½ se ¼	15	"	"	160	L. S. & M. selection Sept 30th 72 Appd June 7th 73
Ne ¼ nw se ¼ Lot 1 & ne sw ¼	17	"	"	284.55	L. S. & M. selection Sept 30th 72 Appd June 7th 73
Sw nw ¼ & lot 3	21	"	"	61.05	L. S. & M. selection Sept 30th 72 Appd June 7th 73
Ne ¼ s ½ nw ¼ e ½ sw ¼ se ¼	23	"	"	480	L. S. & M. selection Sept 30th 72 Appd June 7th 73
751					
Ne ¼ & nw ¼ n ½ sw ¼ sw sw ¼ & se ¼	25	49	20	600	L. S. & M. selection Sept 30th 72 Appd June 7th 73
Ne ¼ se nw ¼ sw ¼ & se ¼	27	"	"	520	L. S. & M. selection Sept 30th 72 Appd June 7th 73
S ½ nw ¼ sw sw ¼ e ½ sw ¼ w ½ se ¼ ne se ¼	29	49	20	320	L. S. & M. selection Sept 30th 72 Appd June 7th 73
E ½ se ¼ & lots 4, 5, 6, 7, 8	31	"	"	228.71	L. S. & M. selection Sept 30th 72 Appd June 7th 73

Adjustment List 5. 4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Sw nw ¼ sw ¼ & lots 1, 2, 5, 6, 7, 8	33	"	"	403.40	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Ne ¼ e ½ nw ¼ sw ¼ & se ¼	35	"	"	560	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
All	7	45	21	663.43	L. S. & M. selection Mch. 19th, 73. Appd June 7th 73
All	5	46	21	645.92	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Nw nw ¼ sw ¼ se ¼	7	"	"	394.18	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
All	9	"	"	640	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
All	17	"	"	640	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
All	19	"	"	680.88	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Ne ¼ & nw ¼ ne sw ¼ sw sw ¼ nw se ¼ e ½ se ¼	29	"	"	520	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
752					
Ne ne ¼ w ½ ne ¼ nw ¼ & sw ¼	31	46	21	481.66	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
N ½ sw ¼ se ¼	1	47	21	240	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Nw ne ¼ s ½ ne ¼ nw ¼ & se ¼ & se ¼	3	"	"	583.86	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
All	5	"	"	611.36	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Ne ¼ & nw ¼ & sw ¼ w ½ se ¼ ne se ¼	7	"	"	652.16	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
All	9	47	21	640	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
All	13	"	"	640	L. S. & M. selection Sept. 30th 72 Appd June 7th 73

Adjustment List 5. 4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼ & nw ¼ & sw ¼ w ½ se ¼ ne se ¼	15	"	"	600	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Sw ¼ & se ¼	17	"	"	320	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
All	19	"	"	683.66	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Ne ¼ & nw ¼ & sw ¼ nw se ¼ e ½ se ¼	21	"	"	600	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Ne ne ¼ w ½ ne ¼ nw ¼ nw sw ¼ e ½ sw ¼ w ½ se ¼ se se¼	23	"	"	520	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Ne ¼ e ½ nw ¼ nw nw ¼ e ½ sw ¼ se ¼	27	"	"	520	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
753					
Se ne ¼ w ½ ne ¼ nw ¼ & sw ¼ & se ¼	29	47	21	600	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Ne ¼ se nw ¼ w ½ nw ¼ sw ¼ & se ¼	31	"	"	638.16	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
W ½ ne ¼ nw ¼ sw ¼ & sw se ¼	33	"	"	440	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
All	1	48	21	632.16	L. S. & M. selection June 29th 74 Patd June 3rd 75
Lots 5, 6, 7	3	"	"	79.85	L. S. & M. selection June 29th 74 Patd June 3rd 75
S ½ ne ¼ e ½ sw ¼ sw sw ¼ se ¼	11	"	"	360	L. S. & M. selection June 29th 74 Patd June 3rd 75
Ne ne ¼ sw ¼ s ½ se ¼	13	"	"	280	L. S. & M. selection June 29th 74 Patd June 3rd 75
E ½ ne ¼ nw ne ¼ n ½ nw ¼ s ½ se ¼	15	48	21	280	L. S. & M. selection June 29th 74 Patd June 3rd 75

Adjustment List 5. 4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Se ne ¼ s ½ sw ¼ n ½ se ¼ se se ¼	21	"	"	240	L. S. & M. selection June 29th 74 Patd June 3rd 75
Sw ¼ sw se ¼	23	"	"	200	L. S. & M. selection June 29th 74 Patd June 3rd 75
Sw nw ¼ nw sw ¼	25	"	"	80	L. S. & M. selection June 29th 74
E ½ ne ¼ sw nw ¼ s ½ sw ¼ sw se ¼	27	"	"	240	L. S. & M. selection June 29th 74 Patd June 3rd 75
754					
Sw sw ¼ e ½ se ¼ sw se ¼	29	48	21	160	L. S. & M. selection June 29th 74 Patd June 3rd 75
Ne ne ¼ sw se ¼	31	"	"	80	L. S. & M. selection June 29th 74 Patd June 3rd 75
E ½ ne ¼ nw nw ¼ se nw ¼ sw ¼ s ½ se ¼	33	"	"	400	L. S. & M. selection June 29th 74 Patd June 3rd 75
Ne ne ¼ e ½ sw ¼	35	49	21	120	L. S. & M. selection June 29th 74 Patd June 3rd 75
Nw ne ¼ nw nw ¼ s ½ nw ¼ w ½ sw ¼ se sw ¼ s ½ se ¼	1	45	22	359.50	L S. & M. selection Mch. 19th 73 Appd June 7th 73
Ne ¼ & nw ¼ & se se ¼	3	"	"	357.82	L. S. & M. selection Mch. 19th 73 Appd June 7th 73
Ne ¼ n ½ nw ¼ sw nw ¼ sw sw ¼	5	"	"	319.52	L. S. & M. selection Mch. 19th 73 Appd June 7th 73
Se ne ¼ se se ¼	7	"	"	80	L. S. & M. selection Mch. 19th 73 Appd June 7th 73
E ½ ne ¼	11	"	"	80	L. S. & M. selection Mch. 19th 73 Appd June 7th 73
Sw nw ¼	13	"	"	40	L. S. & M. selection Mch. 19th 73 Appd June 7th 73
Ne ne ¼ w ½ sw ¼ ne se ¼	15	"	"	160	L. S. & M. selection Mch. 19th 73 Appd. June 7th 73

755

Adjustment List 5. 4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Sw nw ¼	17	45	22	40	L. S. & M. selection Mch 19th 73 Appd June 7th 73
Ne ne ¼ w ½ nw ¼	19	"	"	104.13	L. S. & M. selection Mch 19th 73 Appd June 7th 73
Nw ne ¼ nw sw ¼	21	"	"	80	L. S. & M. selection Mch 19th 73 Appd June 7th 73
Se sw ¼ s ½ se ¼	23	"	"	120	L. S. & M. selection Mch 19th 73 Appd June 7th 73
Sw nw ¼	29	"	"	40	L. S. & M. selection Mch 19th 73 Appd June 7th 73
Ne ¼ e ½ nw ¼ sw nw ¼ (sw sw ¼)	31	"	"	306.14	L. S. & M. selection Mch 19th 73 Appd June 7th 73
Sw ne ¼ s ½ nw ¼ sw ¼ w ½ se ¼ lots 1, 2, 3	1	46	22	480.66	L. S. & M. selection June 29th 74 Patd. June 3rd 75
E ½ ne ¼ nw ne ¼ sw nw ¼ sw sw ¼ ne se ¼	11	"	"	240	L. S. & M. selection June 29th 74 Patd. June 3rd 75
N ½ ne ¼ w ½ nw ¼ w ½ sw ¼	13	"	"	240	L. S. & M. selection June 29th 74 Patd. June 3rd 75
Ne ¼ se sw ¼ s ½ se ¼	21	"	"	280	L. S. & M. selection June 29th 74 Patd. June 3rd 75
W ½ nw ¼ se sw ¼ se ¼	23	"	"	280	L. S. & M. selection June 29th 74 Patd. June 3rd 75
All	25	"	"	640	L. S. & M. selection June 29th 74 Patd. June 3rd 75
756					
Nw ne ¼ nw nw ¼ nw sw ¼ e ½ se ¼ sw se ¼	27	46	22	240	L. S. & M. Selection June 29th 74 Patd. June 3rd 75
N ½ ne ¼ n ½ nw ¼ sw nw ¼ s ½ sw ¼	29	"	"	280	L. S. & M. Selection June 29th 74 Patd. June 3rd 75
Ne ne ¼ n ½ nw ¼ sw ¼ & se ¼	33	"	"	440	L. S. & M. Selection June 29th 74 Patd. June 3rd 75

Adjustment List 5. 4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼ & nw ¼ & sw ¼ n ½ se ¼, se se ¼	35	"	"	600	L. S. & M. Selection June 29th 74 Patd. June 3rd 75
E ½ ne ¼ ne se ¼	1	47	22	118.64	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Ne ¼ e ½ nw ¼ sw ¼ & se ¼	13	"	"	560	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Se ne ¼ e ½ se ¼ ne ne ¼ sw ne ¼ w ½ se ¼	23	"	"	280	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Ne ¼ & nw ¼ e ½ sw ¼ & se ¼	25	"	"	560	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Ne se ¼ w ½ se ¼	35	"	"	120	L. S. & M. selection Sept. 30th 72 Appd June 7th 73
Sw sw ¼	13	45	23	40	L. S. & M. selection Oct. 18th 73 Appd Mch. 13th 74
W ½ sw ¼ e ½ se ¼	25	"	"	160	L. S. & M. selection Oct. 18th 73 Appd Mch. 13th 74
757					
Se ¼	35	45	23	160	L. S. & M. selection Oct. 18th 73 Appd Mch. 13th 74

ADJUSTMENT LIST 6. 4th Mer.

Northern Pacific R. R. Minnesota,
Act July 2, '64, Definite location Nov. 20, '71.
West of Thomson's Junction,
20 mile limits N. P. also 30 mile limits L. S. & M.
L. S. & M. Acts May 5, '64 and July 13, '66.

ADJUSTMENT LIST 6. 4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS
		N.	W.		
Nw ¼	25	49	21	160	L. S. & M. selection June 29th 74 Patd. June 3rd 75

758 Adjustment List 8. 4th Mer. and 5th Mer.

Northern Pacific R. R. Minnesota.
Act July 2, '64, Definite location Nov. 20, '71,
West of Thomson's Junction
20 mile limits N. P. also within 15 miles
withdrawal of St. P. & N. P.—St.P. & N. P. Act Mch. 3, '57.

ADJUSTMENT LIST 8 4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS
		N.	W.		
Ne ne ¼	7	42	29	40	P. C. 1845 June 22nd 64 also N. P. selection Mch 22nd 81
S ½ se ¼	31	43	29	80	M. B. L. W. 102753 R & R 3335, July 22nd 64, Swamp selection Nov. 21st 76 & May 8th 78
Sw nw ¼ n ½ sw ¼ se sw ¼	13	42	30	160	S. H. B. Scrip 4513, R & R. 189, Jany 8th 63

ADJUSTMENT LIST 8 5th Mer.

		N.	W.		
Nw ne ¼	7	130	31	40	S. H. B. Scrip 182 R & R 146, Dec. 14th 60.
Sw ne ¼	"	"	"	40	S. H. B. Scrip 182 R & R 146 Dec 14th 60 also Swamp selection Nov. 21st 76
E ½ ne ¼ ne se ¼	"	"	"	120	P. C. 7709 May 2nd 76. See letter "F" Apr 10th 76

759

		N.	W.		
W ½ se ¼ and lots 15 & 16	7	130	31	160	S. H. B. Scrip 317, R & R 142 Dec. 5th 60
N ½ nw ¼	23	131	31	80	D. S. 4534 May 4th & Aug. 15th 74 P. C. 7706, Apr. 29th, 76. See letter "F" Apr 10th 76

Northern Pacific R. R. Minnesota.
Act July 2, '64, Definite location Nov. 20, '71.
West of Thomson's Junction
20 mile limits N. P. clear.

ADJUSTMENT LIST 9. 5th Mer.

		N.	W.		
Ne sw ¼	1	136	25	40	P. C. 3328 Mch 19th 67. also Swamp selection Nov 21st 76.
Se se ¼	5	"	"	40	M. B. L. W. 104088 R & R 3440, Dec 20th 64, also Swamp selection Nov. 21st 76

Adjustment List 9. 5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS
		N. W.			
Lot 3	9	"	"	37.45	M. B. L. W. 46683, R & R 3653 Feb. 27th 66. also Swamp selection July 11th 70.
760					
Ne nw ¼	27	137	25	40	A. C. Scrip 1332 "Penn." R. & R. 805 Oct. 18th 66. also Swamp selection Nov. 21st 76
Ne sw ¼	"	"	"	40	A. C. Scrip 970 "Ky." R. & R. 796 Oct. 18th 66. also Swamp selection Nov. 21st 76
N ½ se ¼	"	"	"	80	A. C. Scrip 1333 "Penn." R. & R. 811, Oct. 18th 66. also Swamp selection Nov. 21st 76
Se ne ¼	35	137	25	40	A. C. Scrip 1325 "Ky." R. & R. 798, Oct. 18th 66 also Swamp selection Nov. 21st 76
Lot 1	27	138	25	34.44	P. C. 3277 Feb. 12th 67. also Swamp selection Nov. 21st 76
Nw ne ¼	11	136	26	40	M. B. L. W. 110443, R. & R. 3444 Dec. 20th 64, also Swamp selection Nov. 21st 76
Se se ¼	5	137	26	40	M. B. L. W. 104617, R. & R. 3843½ Oct. 18th 66. also Swamp selection Nov. 21st 76
Se se ¼	35	138	26	40	P. C. 3168 Dec. 17th 66. also Swamp selection Nov. 21st 76
Ne nw ¼	9	135	27	40	P. C. 4750 Jany 4th 70. also Swamp selection Nov. 21st 76
Nw sw ¼	25	137	27	40	P. C. 3360 Oct. 15th 67. also Swamp selection Nov. 21st 76
Nw nw ¼ & lot 1	9	133	28	85	P. C. 5700 July 5th 72 Appd Apr. 10th 72 by Div. "F"
Se sw ¼ sw se ¼	17	136	28	80	N. P. selection June 20th 73
Sw sw ¼	1	134	30	40	P. C. 7560 Oct. 22nd 75. See Ind. selection List 20. Apr. 29th. 93
761					
			N. W.		
Nw ne ¼	31	134	30	40	C. Script 22. R. & R. 199. Apr. 20. 70. Canceled May 14th 75 P. C. 7462 June 16th 75. also Swamp selection Nov. 21st 76

Adjustment List 9. 5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
Lots 1 & 2	19	135	30	96.04	C. Scrip 202, R. & R. 13 Apr. 29th, 70 Canceled May 14th 75 P. C. 7463 June 16th 75 N. P. selection Mch. 11th 73
Nw sw ¼	29	"	"	40	C. Scrip 61, R. & R. 205, Apr. 23rd 70, Canceled May 14th 75 P. C. 7460 June 16th 75, also Swamp selection Sept. 15th 71
Sw se ¼	27	133	31	40	P. C. 3816 Dec. 2nd 67, also Swamp selection Nov. 21st 76
Ne sw ¼	"	"	"	40	A. C. Scrip 203 Ohio, R. & R. 1329, Jany. 17th 67, also swamp selection Nov. 21st 76
Se sw ¼	29	"	"	40	P. C. 3079 Nov. 30th 66 also Swamp selection Nov. 21st 76
Ne sw ¼ w ½ sw ¼		"	"	120	P. C. 4018 May 21st 68, also Swamp selection Nov. 21st, 76.
Se ne ¼	31	"	"	40	P. C. 4404 Jany. 5th, 69, also Swamp selection Nov. 21st, 76.
Ne nw ¼	33	"	"	40	P. C. 4028 May 26th, 68 also Swamp selection Nov. 21st, 76.
762					
			N. W.		
Nw nw ¼	7	133	32	31.31	P. C. 3194 Jany. 2nd 67, also Swamp selection Nov. 21st 76
S ½ ne ¼	29	"	"	80	A. C. Scrip 1744 "Ky," R. & R. 621, Sept. 18th 66, also Swamp selection Nov. 21st 76
Sw sw ¼	35	"	"	40	P. C. 4445 Feb. 21st 69 also Swamp selection Nov. 21st 76
S ½ nw ¼	1	130	33	80	Hd. 10115 Aug. 26th 78 F. C. 6422 Mch. 14th 88 also see letter "F," Mch. 1st 88
N ½ sw ¼	"	"	"	80	Hd. 14147 Mch. 28th 88, also see letter "F" Mch. 21st 88
Nw sw ¼	5	130	33	40	A. C. Scrip 277 N. J. R. & R. 187, Jany. 4th 66, also Swamp selection Nov. 21st 76
N ½ se ¼ sw se ¼	"	"	"	120	Hd. 9968 Apr. 4th 78 F. C. 5072 Mch. 4th 82. Relinquished by N. P. May 14th 77
Sw nw ¼	9	"	"	40	Hd. 2577 May 28th 66. F. C. 939 Feb. 12th 72, also Swamp selection Nov. 21st 76
Nw sw ¼	"	"	"	40	Hd. 5869 Feb. 24th 69. F. C. 2117 Aug. 20th 74 also Swamp selection Nov. 21st 76

Adjustment List 9. 5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
Sw sw ¼	"	"	"	40	Hd. 5658 Oct. 12th 68. F. C. 2116 Aug. 20th 74, also Swamp selection Nov. 21st 76.
763			N. W.		
N ½ ne ¼	11	130	33	80	D. S. 4410 Apr. 1 & 1st 78 Hd. 10122 Sept. 9th 78, F. C. 6580 Nov. 17th 88, also see Letter "F" Apr. 24th 84
N ½ sw ¼	13	"	"	80	Hd. 9894 Feb. 5th 78 F. C. 6520 Sept. 1st 88, see letter "F" Dec. 28th 83
S ½ sw ¼	"	"	"	80	Hd. 9895 Feb. 5th 78, F. C. 6579 Nov. 17th 88, also see letter "F" Apr. 21st 84
N ½ se ¼	"	"	"	80	D. S. 2589 Jany 20 & 21 71 Hd. 10283 Jany 29th 79 F. C. 5336 Apr. 14th 83
S ½ se ¼	"	"	"	80	Hd. 9920, Feb. 29th 78 F. C. 6578 Nov. 17th 88 see letter "F" Dec. 2nd 86
W ½ nw ¼	15	"	"	80	Hd. 7378 Dec. 28th 71 Canceled June 7th 72 Hd. 9733 June 22nd 77 F. C. 5279 Jany 2nd 83
Sw ¼	15	130	33	160	F. C. 135 Jany 30th 78
N ½ se ¼	"	"	"	80	Hd. 13658 Mch. 30th 87 F. C. 6484 Dec. 9th 87, also see Letter "F" Apr. 25th 91
S ½ se ¼	"	"	"	80	D. S. 2517 June 3 & 7th 69 Offered—N. P. selection Mch. 22nd 83
Sw ¼	17	131	33	160	P. C. 5224 Dec. 20th 74
764					
Se ¼	21	131	33	160	Hd. 9269 Aug. 12th 75 F. C. 4766 Oct. 8th 80 Relinquished by N. P. May 14th 77
Nw Nw ¼	23	"	"	40	Hd. 6387 Apr. 13th 70, F. C. 3151 June 21st 75, also Swamp selection Nov. 21st 76
Sw sw ¼	3	132	33	40	S. H. B. Scrip 581 "D," R. & R. 287, Act July 17th 54
N ½ ne ¼ n ½ nw ¼	13	"	"	160	D. S. 2945 Mch. 20 & 24th 71 Offered—N. P. selection July 30th 83
S ½ ne ¼ s ½ nw ¼	"	"	"	160	D. S. 2946 Mch. 20 & 24th 71 Offered—N. P. selection July 30th 83
Se ¼	"	"	"	160	D. S. 2948 Mch. 20 & 24th 71 Offered—N. P. selection July 30th 83
Sw ¼	"	"	"	160	D. S. 2947 Mch. 20 & 24th 71 Offered—N. P. selection July 30th 83
E ½ se ¼	17	133	33	80	A. C. Scrip 528 Ohio R. & R. 1931 June 7th 67, also Swamp selection Nov. 21st 76

Adjustment List 9. 5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
			N. W.		
E ½ se ¼	19	"	"	80	S. H. B. Scrip 339 D. R. & R. 326 Oct. 15th 64, Canceled June 18th 67. (Vacant.)
E ½ sw ¼	21	"	"	80	A. C. Scrip 531 Ohio R. & R. 1935 Apr. 1st 67 Swamp selection Nov. 21st 76
W ½ nw ¼	23	133	33	80	M. B. L. W. 106452 R. & R. 4060 Oct. 16th 68, also Swamp selection Nob. 21st 76
765					
			N. W.		
S ½ ne ¼ ne sw ¼	23	133	33	120	M. B. L. W. 94470, R. & R. 3487, May 26th 65, also Swamp selection Nov. 21st 76
Nw sw ¼	"	"	"	40	P. C. 2926 Sept. 15th 66, also Swamp selection Nov. 21st 76
Se se ¼	25	"	"	40	P. C. 2925 Oct. 15th 66 also Swamp selection Nov. 21st 76
Se se ¼	27	"	"	40	A. C. Scrip 2116 Main R. & R. 2984, Nov. 20th 68 also Swamp selection Nov. 21st 76
Se ne ¼	33	"	"	40	A. C. Scrip 3373 "Pa" R. & R. 2357 Aug. 22nd 67, also Swamp selection Nov. 21 76
N ½ nw ¼	31	33		78.14	P. C. 4553 May 29th 68, also Swamp selection Nov. 21st 76
Se ne ¼	33	"	"	40	A. C. Scrip 1734 Ky. R. & R. 620 Sept. 8th 66, also Swamp selection Nov. 21st 76
E ½ ne ¼ e ½ se ¼	21	133	34	160	M. B. L. W. 104654, R. & R. 3802 Oct. 11th 66, also Swamp selection Nov. 21st 76
Nw sw ¼	21	134	38	40	Hd. 5597 Sept. 22nd 68, Canceled Mch. 1st 84, Hd. 8 8397 May 22nd 85 F. C. 7729 Dec. 21st, 91. See Contest 5—4308
Sw se ¼	33	135	38	40	State selection Sept. 17th 67 Appd. May 8th 69, also Swamp selection June 6th 70 Appd. June 19th 73
Sw ne ¼	17	137	38	40	S. H. B. Scrip 432 "B." R. & R. 14 July 13th 70, Swamp selection Apr. 6th 71. Appd. Apr. 2nd 73.
766					
Ne se ¼	17	137	38	40	S. H. B. Scrip 18th "E," R. & R. 8, July 13th 70, Swamp selection Apr. 6th 71, Appd Apr. 2nd 73

Adjustment List No. 9. 5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
			N. W.		
Nw nw ¼ & lot 3	25	134	39	64.72	Hd. 5491 Aug. 31st 60 Canceled Aug. 19th 76. Hd. 7903 May 29th 83 F. C. 5392 Oct. 22nd 86. Contest 5—4308. Closed against Co. July 24th 88.
Ne ¼	33	136	39	160	Hd. 189 May 31st 69. F. C. 1744 Oct. 12th 67. N. P. selection Mch. 21st 73
Nw ¼	"	"	"	160	A. C. Scrip 2327 Ind. R. & R. 2258, July 29th 67. N. P. selection Mch. 21st 73
Sw ¼	"	"	"	160	Hd. 610 Mch. 9th 70. F. C. 1536 June 27th 76. N. P. selection Mch. 21st 73
Sw sw ¼	23	136	40	40	Hd. 4470 Aug. 27th 78 F. C. 4179 Jany 17th 84. Contest 4308 Closed against Co. Aug. 2nd 80
Lots 1, 2, 3, 6, 7	1	137	40	127.35	D. S. 566 Sept. 15th 70 & Aug. 19th 72 P. C. 145 Dec. 28th 72. Canceled Apr. 7th 73 Re-instated. See Letter "F" Apr. 22nd 76 N. P. claim relinquished May 17th 77
Lot 1	3	"	"	30.25	D. S. 1129 Sept. 24th 70 & Mch. 26th 72 P. C. 118 Nov. 8th 72 Canceled Apr. 7th 73 Reinstated. See Letter "F" Apr. 22nd 76 N. P. claim relinquished May 17th 77
W ½ sw ¼	23	139	40	80	S. H. B. Scrip 427 "D" R. & R. 32 Feb. 10th 72 Act July 17th 54

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Adjustment List 10. 5th Mer.

Northern Pacific R. R. Minnesota.
Act July, 2, '64. Definite location Nov. 20, '71.
West of Thomson's Junction,
20 mile limits N. P. also 20 mile limits
St. Vin. Ext'n. of St. P. & P.

ADJUSTMENT LIST 10. 5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Se sw ¼ ne se ¼ s ½ se ¼	29	132	37	160	Hd. 8859 Oct. 8th 88. F. C. 5960 Dec. 14th 80 N. P. selection Mch. 21st 73 Relinquished by Gov. July 20th 80. Contest 5—4652 Closed Jany. 23rd 92. Contest—4858 Closed May 28th 88.
Lots 8 & 9	5	133	40	71.12	Hd. 3912 June 18th 67 Canceled May 20th 70 Hd. 735 June 9th 70 Canceled Dec. 14th 71 D. S. 1152 Nov. 5th 86 & Jany. 20th 87 P.C. 3175 June 11th 88 Contest—8593
Lot 6	7	139	43	8.75	D. S. 949 June 3rd 70 & Jany. 12th 72 Hd. 167 Dec. 10th 72. F. C. 585 Aug. 4th 79 Selected by St. Vin. Ext'n. of St. P. & P. June 5th 74 Appd. July 10th 74

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Adjustment List 11. 5th Mer.

Northern Pacific R. R. Minnesota
Act July 2, '64, Definite location Nov. 20, '71,
West of Thomson's Junction
20 mile limits N. P. also within 10 mile
limits St. Vin. Ext'n. of St. P. & P.

ADJUSTMENT LIST 11. 5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		n/w N.	W.		
N ½ se ¼ nw sw ¼ & lots 3 and 6	11	136	44	195.95	A. C. Scrip 288 Texas R. & R. 438. Feby 28th 72 See Letter "F" June 19th 74
N ½ ne ¼ n ½ nw ¼	21	136	45	160	Hd. 1505 June 12th 71 F. C. 1491 June 16th 76 See Contest 12—11618
E ½ ne ¼	5	139	48	76	N. P. selection Sept. 30th 72 Patd Jany 18th 73 St. P. M. & M. selection June 2nd 85

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼ & se ¼	35	142	48	320	P. C. 619 Apr. 13th 70 Awarded to N. P. by U. S. S. C. Mch. 2nd 91
Nw ¼	"	"	"	160	P. C. 649 Apr. 22nd 70 Awarded to N. P. by U. S. S. C. Mch. 2nd 91
Sw ¼	"	"	"	160	P. C. 657 May 30th 70 Awarded to N. P. by U. S. S. C. Mch. 2nd 91
Ne ne ¼	13	142	49	40	S. H. B. Scrip 360 "E" R. & R. 83, Sept. 14th 60
Lot 2	"	"	"	31.06	S. H. B. Scrip 360 "E" R. & R. 83, Sept. 14th 60

769 Office Report, on Co's. List.

Lands lying West of Thomson's Junction basis considered bad—deduct from Company's List.

See Adjustment List 2.

Area............ 6,493.97

See next page.

770 Northern Pacific R. R. Minnesota.

Act July 2nd 64, 30 mile or 1st. Indemnity limits N. P. also 20 mile limits L. S. & N.

Lands included in N. P. R. Co's list filed May 4th 99. See 99—55144—and designated by the Co. as the bases for 2nd. Indemnity selections, but not included in Office Statement.

These tracts being outside of the granted or 20 mile limits of N. P. R. R. would not on that account form bases for 2nd. Indemnity selections.

Acres...... 6493.97

771

Adjustment List 2,
1st Indemnity limits N. P. 4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.

Northern Pacific R. R. Minnesota.
Act July 2, '64. 30 mile or 1st Ind. limits
N. P. also 20 mile limits L. S. & M.

ADJUSTMENT LIST 2. Ind. limits

		N.	W.		4th. Mer.
Sw ne ¼ e ½ sw ¼ sw sw ¼	1	44	16	160	L. S. & M. selection Jany 16th 69 Appd June 14th 69

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N. W.			
Ne ¼ n ½ nw ¼ se se ¼	3	"	"	279.26	L. S. & M. selection Jany 16th 69 Appd June 14th 69
S ½ ne ¼ nw ¼ ne sw ¼ n ½ se ¼	5	"	"	361.09	L. S. & M. selection Jany 16th 69 Appd June 14th 69
Nw ne ¼	7	"	"	40	L. S. & M. selection Jany 16th 69 Appd June 14th 69
E ½ ne ¼ sw ne ¼ e ½ nw ¼	11	"	"	200	L. S. & M. selection Jany 16th 69 Appd June 14th 69
Sw nw ¼	"	"	"	40	Swamp selection Nov. 30th 63 Appd June 30th 65
Sw sw ¼ w ½ se ¼	13	45	16	120	L. S. & M. selection Jany 16th 69 Appd June 14th 69
Ne ¼ s ½ nw ¼ ne sw ¼ w ½ sw ¼ nw se ¼	19	"	"	380.88	L. S. & M. selection Jany 16th 69 Appd June 14th 69
Ne ¼ s ½ nw ¼ sw ¼ w ½ se ¼	21	"	"	480	L. S. & M. selection Jany 16th 69 Appd June 14th 69
772					
Adjustment List 2, 1st Indemnity limits N. P.					4th Mer.
Ne ne ¼ w ½ nw ¼ nw se ¼	23	45	16	120	L. S. & M. selection Jany. 16th 69 Appd. June 14th 69
Se nw ¼ e ½ sw ¼ sw sw ¼	27	"	"	160	L. S. & M. selection Jany. 16th 69 Appd. June 14th 69
S ½ ne ¼ w ½ nw ¼ se nw ¼ sw ¼ se ¼	29	45	16	520	L. S. & M. selection Jany. 16th 69 Appd. June 14th 69
S ½ ne ¼ nw ¼ ne sw ¼ nw se ¼	31	"	"	307.40	L. S. & M. selection Jany. 16th 69 Appd. June 14th 69
Ne ne ¼ e ½ nw ¼ e ½ sw ¼ sw sw ¼ nw se ¼ se se ¼	33	"	"	320	L. S. & M. selection Jany. 16th 69 Appd. June 14th 69
E ½ ne ¼ sw ne ¼ e ½ nw ¼ sw nw ¼ e ½ sw ¼ sw sw ¼ nw se ¼	35	"	"	400	L. S. & M. selection Jany. 16th 69 Appd. June 14th 69

Adjustment List 2,
Indemnity limits N. P. 4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
S ½ ne ¼ e ½ nw ¼ n ½ sw ¼ nw se ¼ ne se ¼	1	44	17	320.70	L. S. & M. selection Jany. 16th 69 Appd. June 14th 69
N ½ ne ¼ n ½ nw ¼	3	"	"	164.64	L. S. & M. selection Jany. 16th 69 Appd. June 14th 69
Nw ne ¼ nw ¼ n ½ sw ¼ sw sw ¼	21	45	17	320	L. S. & M. selection Dec. 19th 70 Appd. Feb. 28th 72
Ne ne ¼ sw ne ¼ s ½ sw ¼	23	"	"	160	L. S. & M. selection Dec. 19th 70 Appd. Feb. 28th 72
Ne ¼ & nw ¼ sw ¼ & n ½ se ¼	25	"	"	560	L. S. & M. selection Dec. 19th 70 Appd. Feb. 28th 72
E ½ ne ¼	27	"	"	80	L. S. & M. selection Dec. 19th 70 Appd. Feb. 28th 72
773					
Se ne ¼ e ½ se ¼	29	45	N. W. 17	120	L. S. & M. selection Dec. 19th 70 Appd Feb. 28th 72
Se ne ¼ w ½ ne ¼ nw ¼ n ½ sw ¼ n ½ se ¼ se se ¼	33	"	"	480	L. S. & M. selection Dec. 19th 70 Appd Feb. 28th 72
Nw ne ¼ ne nw ¼ w ½ nw ¼ w ½ sw ¼	35	"	"	240	L. S. & M. selection Dec. 19th 70 Appd Feb. 28th 72

"A"

774 **Total Deductions.**

	58,560.16
Lands not in grant limits..................	6,493.97
Lands on pages 3, 4, & 5 Statement A marked "out"	5,639.58
Lands on pages 1 & 2 sup. A marked "out". .	319.80
	71,013.51

775 DEFENDANT'S DULUTH EXHIBITS: Commencing at "F."

F G H·

776 DULUTH EXHIBIT "F:"—Offered in evidence at page 312, this Record:

Sw ¼	Sec.	23	52	12	never taken.
N ½ of sw	"	3	52	15	taken Dec. 27-1898.
S ½ of ne. ne of ne. n ½ of se. sw. of se.	"	15	52	17,	claim 520 acres but tract book only show these descriptions taken.
S ½ of ne.	"	17	52	18	marked on Plat as R. R. but tract book does not show it taken.
Sw nw. nw. sw. & s ½ sw.	"	"	"	"	Never taken.
Lot 4	"	7	"	"	taken Feb. 8-1899

2nd Ind.

Lot 1	Sec.	9	54	11	never taken
Ne ne	"	19	54	12	entered Dec. 8-1888.
Sw ne. nw se.	"	"	"	"	entered Mch. 3 1893
Se. ne.	"	25	55	11	entered June 6-1888
Lot 5	"	5	53	16	taken by N. P. Ry. Co. Nov. 27-99. Act July 1, 1898.
S ½ ne. ne. se. Lot 1	"	15	55	16	entered Dec. 28-1881. Canceled 8/31/83 final cancellation Feb. 19-1885, entered again Sep 11-1888
Nw. sw.	"	27	55	16	entered Dec. 6 1881 Canceled Jan. 27-1887
x					entered again Dec. 29-1894
Se se	"	3	55	14	Aug. 5-1896 Public Sale
Se nw	"	23	54	17	Aug. 23-1900.

777 DULUTH EXHIBIT "G:"—Offered in evidence at page 312, this Record:

Act of July 1st, 1898.

Filed,...........190 . Approved.........., 190 .

Land Department,
Northern Pacific Railway Co.,

List 91
of
Selections of Public Lands made by
Northern Pacific Railroad Company,
as inuring to it under
Grants of July 2, 1864, and May 31, 1870,
in the
Duluth U. S. Land District,
Minnesota.

778 Land Department,
Northern Pacific Railway Company,

List No. 91.

State of Minnesota,
U. S. Land Office at Duluth.

The Northern Pacific Railway Company, the successor in interest of the Northern Pacific Railroad Company, having relinquished to the United States certain lands hereinafter described, under the provisions of the Act of Congress approved July 1st, 1898 (30 Stat. 597-620), and said relinquishments having been duly accepted by the Commissioner of the general land office, now, by virtue of the right conferred upon said Northern Pacific Railway Company as the successor in interest of the Northern Pacific Railroad Company by said Act of Congress approved July 1st, 1898, hereby selects the lands hereinafter specified in lieu of the respective tracts of land so relinquished and hereinafter set opposite and specified as the particular basis for the several tracts hereby selected.

All the lands hereby selected are situated within the Duluth land district.

779 List of lands North of base line and West of Fourth Principal Meridian selected by the Northern Pacific Railway Co. as successor in interest of the Northern Pacific Railroad Co., under the act of Congress approved July 1st, 1898, in lieu of lands set opposite, relinquished under said act of 1898.

Those certain tracts of land which when surveyed will be described as follows:

	PART OF SECTION	Sec.	Town.	Range	Acres	100ths
1	Ne. se.	23	65	12	40	
2	Sw. ne.	25	"	"	40	
3	Se. nw.	25	"	"	40	
4	Sw. se.	11	62	26	40	
5	Sw. ne.	13	"	"	40	
6	Se. ne.	13	"	"	40	
7	Ne. sw.	13	"	"	40	
	Total				280	Acres.

List of land relinquished to the United States by the North-Pacific Railway Co., successors in interest of the Northern Pacific Railroad Co. under act of Congress approved July 1, 1898, and Specified as basis for the particular tracts set opposite and hereby selected.

	PART OF SECTION	Sec.	N. Town	R. Range	Acres	100ths	
1	Ne. ne.	29	25	21	40		Montana Relinq. No. 3 Accepted by Secy. Int. Dec. 14th, 1899.
2	Se. ne.	29	"	"	40		Do.
3	Se. sw.	29	"	"	40		Do.
			N.	E.			
4	Ne. se.	13	3	4	40		Montana Relinq. No. 4 Accepted by Secy. Int. Jany. 30, 1900.
5	Nw. se.	13	"	"	40		Do.
6	Sw. se.	13	"	"	40		Do.
7	Se. se.	13	"	"	40		Do.
	Total				280		Acres.

780 State of Minnesota,
County of Ramsey—ss.

I, Wm. H. Phipps, being duly sworn, depose and say that I am the Land Commissioner of the Northern Pacific Railway Company, the successor in interest of the Northern Pacific Railroad Company; that the lands described in the foregoing list, and which are hereby selected by the Northern Pacific Railway Company, under the Act of Congress approved July 1st, 1898, and all of them, are vacant, unappropriated lands of the United States, not reserved, and have been found upon examination to be non-mineral in character; and said lands, and all thereof, are of the character contemplated by said Act of Congress approved July 1st, 1898; and that the specific lands heretofore relinquished to the United States by said Northern Pacific Railway Company, as successor in interest of the Northern Pacific Railroad Company, in lieu of which the lands herein described are selected, are truly set forth and described in this list, and no selection has heretofore been made in lieu of any of the lands herein specified as the basis for the lands hereby selected.

WM. H. PHIPPS. [Seal]

Subscribed and sworn to before me this twelfth day of January, 1901.

[Notarial Seal] W. F. VON DEYN,
Notary Public, Ramsey County, Minnesota.

U. S. Land Office at Duluth, Minn.,
Jan. 18, 1901.

We hereby certify that we have carefully examined the foregoing selection list filed by the Northern Pacific Railway Company, as successor of the Northern Pacific Railroad Company, under the Act of Congress approved July 1st, 1898, and have critically examined the plats and records of this office, and that the lands selected appear by the records of this office to be subject to such selection. We have therefore received the foregoing list and the selection of the lands therein described, and have made due notation thereof upon the records of this office and will forward the same to the Commissioner of the General Land Office. It is further certified that the foregoing list shows an assessment of fees payable hereunder, and that said Northern Pacific Railway Company has paid to the undersigned, the receiver, the full sum of Four Dollars in full payment and discharge of said fees.

WM. E. CULKIN, Register.
J. M. SMITH, Receiver.

781 DULUTH EXHIBIT "H:"—Offered in evidence at page 312, this Record:

Act of July 1st, 1898.

Filed, ..., 190 . Approved ...., 190 .

Land Department
Northern Pacific Railway Co.,

List 83
of
Selections of Public Lands made by
Northern Pacific Railroad Company,
as inuring to it under
Grants of July 2, 1864, and May 31, 1870,
in the
Duluth U. S. Land District,
Minnesota.

782 Land Department,
Northern Pacific Railway Company,

List No. 83.

State of Minnesota,
U. S. Land Office at Duluth, Minnesota.

The Northern Pacific Railway Company, the successor in interest of the Northern Pacific Railroad Company, having relinquished to the United States certain lands hereinafter described under the provisions of the Act of Congress approved July 1st, 1898, (30 Stat. 597-620) and said relinquishments having been duly accepted by the Commissioner of the general land office, now, by virtue of the right conferred upon said Northern Pacific Railway Company, as the successor in interest of the Northern Pacific Railroad Company, by said Act of Congress approved July 1st, 1898, hereby selects the lands hereinafter specified in lieu of the respective tracts of land so relinquished and hereinafter set opposite and specified as the particular basis for several tracts hereby selected.

All the lands hereby selected are situated within the Duluth land district.

783 List of lands North of base line and West of Fourth Principal Meridian selected by the Norther Pacific Railway Company as successor in interest of the Northern Pacific Railroad Company, under the act of Congress approved July 1st, 1898, in lieu of lands set opposite, relinquished under said act of 1898.

These certain tracts of land when surveyed will be described as follows:

	PART OF SECTION	Sec.	Town.	Range	Acres	100ths
1	Se. se.	15	65	13	40	
2	Ne. se.	21	"	"	40	
3	Nw. se.	21	"	"	40	
4	Ne. nw.	23	"	"	40	
5	Sw. nw.	27	"	"	40	
6	Sw. se.	27	"	"	40	
	Total				240	Acres.

List of lands relinquished to the United States by the Northern Pacific Railway Company, successor in interest of the Northern Pacific Railroad Company under Act of Congress approved July 1st, 1898, and specified as basis for the particular tracts set opposite and hereby selected.

	PART OF SECTION	Sec.	N Town.	W. Range	Acres	100ths	
1	Se. nw	21	134	42	40		Minnesota relinq. No. 1 accepted by Hon. Sec'y. of Interior Nov. 21st, 1899.
2	Ne. sw.	21	"	"	40		
3	Nw. sw	21	"	"	40		
4	Ne. se.	13	135	44	40		
5	Nw. se.	13	"	"	40		
6	Se sw.	13	136	45	40		
	Total				240	Acres.	

784 State of Minnesota,
County of Ramsey—ss.

I, Wm. H. Phipps, being duly sworn, depose and say that I am the Land Commissioner of the Northern Pacific Railway Company, the successor in interest of the Northern Pacific Railroad Company; that the lands described in the foregoing list, and which are hereby selected by the Northern Pacific Railway Company, under the Act of Congress approved July 1st, 1898, and all of them, are vacant, unappropriated lands of the United States, not reserved, and have been found upon examination to be non-mineral in character; and said lands, and all thereof, are of the character contemplated by said Act of Congress approved July 1st, 1898; and that the specific lands heretofore relinquished to the United States by said Northern Pacific Railway Company, as successor in interest of the Northern Pacific Railroad Company, in lieu of which the lands herein described are selected, are truly set forth and described in this list, and no selection has heretofore been made in lieu of any of the lands herein specified as the basis for the lands herein selected.

WM. H. PHIPPS. [Seal]

Subscribed and sworn to before me this 19th day of October, 1900.

[Notarial Seal]

H. BRAYTON,
Notary Public, Ramsey County, Minnesota.

U. S. Land Office at Duluth, Minn.,
Oct. 24, 1900.

We hereby certify that we have carefully examined the foregoing selection list filed by the Northern Pacific Railway Company, as successor of the Northern Pacific Railroad Company, under the Act of Congress approved July 1st, 1898, and have critically examined the plats and records of this office, and that the lands selected appear by the records of this office to be subject to such selection. We have therefore received the foregoing list and the selection of the lands therein described, and have made due notation thereof upon the records of this office and will forward the same to the Commissioner of the General Land Office. It is further certified that the foregoing list shows an assessment of the fees payable hereunder, and that said Northern Pacific Railway Company has paid to the undersigned, the receiver, the full sum of Four Dollars in full payment and discharge of said fees.

WM. E. CULKINS, Register.
J. M. SMITH, Receiver.

785 DULUTH EXHIBIT "I":—Identification at pages 313, 314 and 345, this Record, but does not appear to have been offered in evidence. Omitted from this Record by stipulation of parties. (See page 354.)

DULUTH EXHIBIT "J":—Duly certified. Offered in evidence at page 314 this Record:—

Statement A.
Supplemental A.

STATEMENT "A"

OFFICE REPORT. LANDS LYING WEST OF THOMSON'S JUNCTION.

SEE ADJUSTMENT LISTS.

No. 1 area	5,998.60	
No. 3 "	5,257.50	
No. 5, "	.00	
No. 6 "	.00	
No. 8 "	382.08	
No. 9 "	196,395.84	
No. 10 "	41,332.88	
No. 11 "	42,670.42	
Total "	292,037.32	
Sup. Statement "A"	4,302.07	
	296,339.39	Grand Total of Office Statement.

See next page.

786 Statement showing tracts covered by entries in granted limits Northern Pacific R. R. west of Thomson's Junction—made after date of grant and before definite location.

Total Area 292,037.32.

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Northern Pacific Railroad

(List 1)

4th Mer. Minnesota
Act July 2nd, '64.

Definite location from Thomson's Junction to the Red River of the North, Nov. 20, '71.

(List 1) 20 mile limits clear. 4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Nw ¼—lots 1, 2, 3, 4, 5,	15	48	25	337.05	School selection Mch. 7th, 70, App'd Sept. 23 74.
E ½ sw ¼	9	49	26	80	School selection May 20th 70. App'd Sept. 23rd 74.
Nw ¼ ne ¼ Lot 2	17	"	"	97.75	C. Scrip 5 "D" R. & R. 152 July 22nd 69.
N ½ nw ¼ sw ¼ nw ¼	25	"	"	120	School selection Mch. 7th 70 App'd Sept. 23rd 74.
Se ¼ nw ¼ ne ¼ sw ¼	27	"	"	80	C. Scrip R. & R. 62 1/3 July 18th 68
Lots 3 & 4	25	45	27	56.55	P. C. 6072 Sept. 10th 69

4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Se ¼ se ¼	23	47	27	40	D S. 4113 Sept. 13th 70 Aug. 22nd 72. A. C. Scrip 1054 R. & R. 3251—Sept. 4th 72. Cancl'd Apr. 7th 73. P. C. 7112 June 25/74.
Nw ¼ nw ¼	25	"	"	40	D. S. 4113 Sept. 13th 70 Aug. 22nd 72. A. C. Scrip 1054 R. & R.3251 Sept. 4th 72. Cancl'd Apr. 7th, 72, P. C. 7112 June 25th 74.
Lots 3 & 4—w ½ se ¼	9	48	27	175.68	C. Scrip 345 "E" R. & R. 379 Dec. 4th, 66.
Ne ¼	21	"	"	160	S. H. B. Scrip 502 "E" R. & R. 378 Sept. 1st 66
Lot 3	"	"	"	46.14	S. H. B. Scrip 309 "A" R. & R. 381 Mch. 19th 67
Ne ¼ se ¼	"	"	"	40	S. H. B. Scrip 264 "B" R. & R. 380, Mch. 19th 67 Cancel'd Mch. 23rd 72
788					
Nw ¼ nw ¼	1	49	27	40	A. C. Scrip 1376 R. & R. 3134 Oct. 26th 70—
Sw ¼ se ¼	23	"	"	40	School selection May 20th 70. Appd. Sept. 23rd 74.
N ½ nw ¼	25	"	"	80	S. H. B. Scrip 14 "D" Mch. 22nd 70 R. & R. 183 Mch. 12th 70 Cancl'd Sept. 15th 73.
N ½ se ¼	33	50	27	80	School selection May 20th 70 App'd Sept. 23rd 74.
S ½ se ¼	35	"	"	80	A. C. Scrip 1376 R. & R. 3134 Sept. 26th 70
N ½ nw ¼	9	42	28	80	A. C. Scrip 985 "Penn" R. & R. 248 Sept. 30th 67
Lot 3	13	43	28	24.95	P. C. 3730 Oct. 22nd 67.
Lot 2	21	"	"	28.10	P. C. 5488 June 26th 71
Lot 7	"	"	"	49.50	School selection Mch. 7th 70. App'd Sept. 23rd 74.
Sw ¼ sw ¼ e ½ sw ¼ Lot 8	"	"	"	129.70	A. C. Scrip 613, "Mass." R. & R. 2084 June 20th 67.
Ne ¼ nw ¼	23	"	"	40	P. C. 5486 June 26th 71.
Sw ¼ sw ¼	25	"	"	40	P. C. 3581 July 16th 67
Nw ¼	27	"	"	160	A. C. Scrip 1628 "Mass." R. & R. 2049 Jany. 20th 67.
Ne ¼ sw ¼ lots 2, 3, 4	"	"	"	153.35	A. C. Scrip 1627 "Mass." R. & R. 2032 Jany. 17th 67.
E ½ se ¼ nw ¼ se ¼ Lot 1	"	"	"	150.10	P. C. 5599 Dec. 2nd 71. Cancel'd Mch. 1st June 30/73 Contest 5—4307 Closed ag'nst Co. Mch 15th 97.
Ne ¼ ne ¼	29	"	"	40	P. C. 5485 June 26th 71
Lots 3, 4, 5,	33	"	"	113.65	A. C. Scrip 155 "N. H." R. & R. 2059 June 24th 67.

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PARTS OF SECTIONS.	Sec.	T.	R	4th Mer.	REMARKS.
		N.	W.		
Se ¼	33	43	28	160	M. B. L. W. 112257, Nov. 15th. 71. R. & R. 4392, Dec. 2nd, 71.
Ne ¼	35	"	"	160	A. C. Scrip 3405, "Penn" R. & R. 2269, July 30th, 67.
Nw ¼	"	"	"	160	A. C. Scrip 3800 "Penn" 2267, July 30th, 67.
Sw ¼	"	"	"	160	A. C. Scrip 154 "N. H." R & R. 2058, June 24th, 67.
Lots 3 & 4	25	44	28	114.80	School selection Mch. 7, 70. Appd. Sept. 23rd, 74.
Nw ¼ se ¼ nw ¼ ne ¼ Nw ¼ s ½ se ¼ lots 2, 3, 4, 5, 6	27	"	"	498.50	School selection Mch. 7th, 70. Appd. Sept. 23rd, 74.
E ½ ne ¼ nw ¼ ne ¼ ne ¼ nw ¼ lots 3 & 4	25	45	28	243	School selection Mch. 7th, 70. Appd. Sept. 23rd, 74.
Se ¼ nw ¼ w ½ nw ¼ lot 1	3	45	29	156.21	A. C. Scrip 849 R. & R. 1126, Dec. 8th, 66.
Ne ¼ nw ¼	5	"	"	37.92	P. C. 3131, Dec. 8th, 66.
Sw ¼ ne ¼ lot 2	5	46	29	80.21	C. Scrip—R. & R. 117, July 23rd, 70. Cancl'd Sept. 15th, 73.
Nw ¼ sw ¼	29	"	"	40	Scrip 272 R. & R. 454, Jan'y 4th, 70.
Se ¼ nw ¼	31	"	"	40	P. C. 7424 July 1st, 76. Scrip 6 "B" R. & R. 218, June 1st, 70. Cancl'd Apr. 13th, 76.
E ½ ne ¼	"	"	"	80	P. C. 7424 July 1st, 76. Scrip 158 "C" R. & R. 216, June 1st, 70. Cancel'd Apr. 13th, 76.
W ½ ne ¼	"	"	"	80	P. C. 7424 July 1st, 76. Scrip 237 "C" R. & R. 217, June 1st, 70. Cancl'd Apr. 13th, 76.
Ne ¼ s ½ nw ¼ and lots 1 & 2	19	45	30	309.25	P. C. 5076, Aug. 13th, 70.

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				4th Mer.	
S ½ ne ¼ e ½ se ¼	1	46	30	120	Scrip 15 R. & R. 465, Feby. 4th, 71.
Ne ¼ nw ¼ nw ¼ ne ¼	35	"	"	80	S. H. B. Scrip 52 "E" R. & R. 466, Feby. 4th, 71.
Lot 1	23	45	31	8.63	P. C. 5037, July 1st, 70.
Ne ¼	25	"	"	160	P. C. 5346, Mch. 23rd, 71. D. S. 2752, July 22 & 23rd, 70.
E ½ nw ¼ e ½ sw ¼	"	"	"	160	P. C. 5051, July 14th, 70.
Se ¼	"	"	"	160	P. C. 5347, Mch. 23rd, 71. D. S. 2758, July 22 & 23rd 70.
Lots 1, 2, 3, 4	"	"	"	134.15	P. C. 5737, July 1st, 70.
Lot 2	35	"	"	47.78	P. C. 4740, Nov. 27th, 69.
Lot 3	"	"	"	38.90	P. C. 5085, Aug. 17th, 70.
E ½ se ¼ se ¼ ne ¼ lot 1	"	"	"	141.73	Hd. 6620, Aug. 22nd, 70. F. C. 3290, Dec. 2nd, 75.

(List 3) 4th Mer.

20 mile limits N. P. conflict with 10 mile limits L. S. & M. where roads are separate—

Definite location from Thomson's Junction to the Red River of the North— Nov. 20, '71— 4th Mer.

		4th Mer.			
PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼	5	46	16	160.40	A. C. Scrip 729, R. & R. 75, Oct. 23rd, 66.
Nw ¼	"	"	"	159.88	A. C. Scrip 730 R. & R. 76, Oct. 23rd, 66.
Se ¼	"	"	"	160	A. C. Scrip 732 R. & R. 78 Oct. 23rd, 66.
Sw ¼	"	"	"	160	A. C. Scrip 731 R. & R. 77 Oct. 23rd, 66.
791					
Ne ¼	7	46	16	160	A. C. Scrip 737 R. & R. 83, Oct. 23rd, 66.
Nw ¼	"	"	"	134.33	A. C. Scrip 738 R. R. 84, Oct. 23rd, 66.
Se ¼	"	"	"	160	A. C. Scrip 740 R. & R. 86, Oct. 23rd, 66.
Sw ¼	"	"	"	134.64	A. C. Scrip 739 R. & R. 85, Oct. 23rd, 66.
Ne ¼	21	47	16	160	A. C. Scrip 690 R. & R. 23, Oct. 23rd, 66.
Nw ¼	"	"	"	160	A. C. Scrip 691 R. & R. 24, Oct. 23rd, 66.
Sw ¼	"	"	"	160	A. C. Scrip 688 R. & R. 25, Oct. 23rd, 66.
Se ¼	"	"	"	160	A. C. Scrip 689 R. & R. 26, Oct. 23rd, 66.
Ne ¼	23	"	"	160	A. C. Scrip 683 R. & R. 31, Oct. 23rd, 66.
Nw ¼	"	"	"	160	A. C. Scrip 682 R. & R. 32, Oct. 23rd, 66.
Se ¼	"	"	"	160	A. C. Scrip 680 R. & R. 34, Oct. 23rd, 66.
Sw ¼	"	"	"	160	A. C. Scrip 681, R. & R. 33, Oct. 23rd, 66.
Nw ¼	25	"	"	160	A. C. Scrip 707 R. & R. 40, Oct. 23rd, 66.
Sw ¼	"	"	"	160	A. C. Scrip 708 R. & R. 41, Oct. 23rd, 66.
W ½ se ¼	"	"	"	80	A. C. Scrip 709 R. & R. 42, Oct. 23rd, 66.
Ne ¼	27	"	"	160	A. C. Scrip 714 R. & R. 47, Oct. 23rd, 66.
Nw ¼	"	"	"	160	A. C. Scrip 715 R. & R. 48, Oct. 23rd, 66.
Se ¼	"	"	"	160	A. C. Scrip 717 R. & R. 50, Oct. 23rd, 66.
Sw ¼	"	"	"	160	A. C. Scrip 716 R. & R. 49, Oct 23rd, 66.

792

4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼	29	47	16	160	A. C. Scrip 722 R. & R. 55, Oct. 23rd, 66.
Se ¼	"	"	"	160	A. C. Scrip 723 R. & R. 56, Oct 23rd, 66.
Ne ¼	33	"	"	160	A. C. Scrip 692 R. & R. 59, Oct 23rd, 66.
Nw ¼	"	"	"	160	A. C. Scrip 693 R. & R. 60, Oct 23rd, 66.
Se ¼	"	"	"	160	A. C. Scrip 695, R. & R. 62, Oct 23rd, 66.
Sw ¼	"	"	"	160	A. C. Scrip 694 R. & R. 61, Oct 23rd, 66.
Ne ¼	35	"	"	160	A. C. Scrip 700 R. & R. 67, Oct 23rd, 66.
Nw ¼	"	"	"	160	A. C. Scrip 701 R. & R. 68, Oct 23rd, 66.
Se ¼	"	"	"	160	A. C. Scrip 703 R. & R. 70, Oct 23rd, 66.
Sw ¼	"	"	"	160	A. C. Scrip 702 R. & R. 69, Oct 23rd, 66.
Lots 5 & 6	31	49	16	108.25	M. B. L. W. 9627 R. & R. 341, Oct. 20th, 69.

(List 5) N. W. 4th Mer.

20 mile limits N. P. conflict with 20 mile limits (1st Ind.) L. S. & M. where roads are separate.

Definite location from Thomson's Junction to the Red River of the North— Nov. 20, '71— 4th Mer.

(No entries made on List 5 between these dates).

4th Mer.

(List 6) N. W.

(No entries made on List 6 between these dates).

793

4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼	29	47	16	160	A. C. Scrip.

20 mile limits N. P. conflict with 30 mile limits (2nd Ind.) L. S. & M. where roads are separate.

Definite location from Thomson's Junction to the Red River of the North— Nov. 20, '71 4th Mer.

(List 8) 4th Mer.

20 mile limits N. P. also within 15 miles withdrawal of St. P. & N. P. Definite location from Thomson's Junction to the Red River of the North— Nov. 20, '71— 4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Sw ¼ nw ¼	5	42	29	40	P. C. 1846, July 22nd, 64.
Nw ¼ nw ¼	"	"	"	36.12	M. B. L. W. 102753 R. & R. 3333, July 22nd, 64.
E ½ sw ¼ nw ¼ sw ¼	7	"	"	133.07	M. B. L. W. 2478 R. & R. 3473, Mch. 11th, 65.
Sw ¼ sw ¼	"	"	"	52.89	M. B. L. W. 103286 R. & R. 3334, July 22nd, 64.
			5th Mer.		
Ne ¼ ne ¼	23	132	32	40	S. H. B. Scrip 216 "B" R. & R. 17, Oct. 15th, 64.
Se ¼ nw ¼	25	"	"	40	S. H. B. Scrip 455 "A" R. & R. 321, Oct. 15th, 64.
Ne ¼ sw ¼	"	"	"	40	S. H. B. Scrip 512 "A" R. & R. 322, Oct. 15th, 64.

(List 9) 5th Mer.

20 mile limits clear

Definite location from Thomson's Junction to the Red River of the North— Nov. 20, '71, 5th Mer.

794

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Se ¼ ne ¼	1	136	25	40	P. C. 3312, Mch. 9th, 67.
N ½ nw ¼	"	"	"	82.43	P. C. 2069, Nov. 10th, 64.
Sw ¼ nw ¼ nw ¼ sw ¼	"	"	"	80	S. H. B. Scrip 497 "D" R. & R. 358, Oct. 15th, 64.
Se ¼ nw ¼	"	"	"	40	P. C. 2550, Nov. 30th, 75.
Nw ¼ ne ¼	"	"	"	40.60	P. C. 2068, Nov. 10th, 64.
Sw ¼ ne ¼	"	"	"	40	P. C. 3241, Jan'y 18th, 67.
W ½ nw ¼	3	"	"	81.62	M. B. L. W. 103196 R. & R. 3432, Dec. 3rd, 64.
Ne ¼ ne ¼	5	"	"	37.34	P. C. 2136, Dec. 15th, 64.
Sw ¼ ne ¼	"	"	"	40	P. C. 4790, Mch. 14th, 70.
N ½ nw ¼ nw ¼ ne ¼	"	"	"	112.82	M. B. L. W. 105120 R. & R. 3438, Dec. 20th, 64.
Se ¼ ne ¼ ne ¼ se ¼	"	"	"	80	M. B. L. W. 104088 R. & R. 3440, Dec. 20th, 64.
Sw ¼ nw ¼	"	"	"	40	M. B. L. W. 102636 R. & R. 3439, Dec. 20th, 64.
Se ¼ nw ¼	"	"	"	40	P. C. 4191, Mch. 14th, 70.
Nw ¼ se ¼	"	"	"	40	P. C. 4758, Jany. 19th, 70.
Sw ¼ se ¼	5	"	"	40	P. C. 2130, Dec. 10th, 64.
Nw ¼ sw ¼	"	"	"	40	P. C. 4759, Jany. 19th, 70.
Se ¼ sw ¼	"	"	"	40	M. B. L. W. 101022 R. & R. 3437, Dec. 20th, 64.
Ne ¼ se ¼	9	"	"	40	M. B. L. W. 46683 R. & R. 3653 Feby. 27th, 66.
Nw ¼ ne ¼	11	"	"	40	P. C. 2551, Nov. 30th, 65.
E ½ nw ¼ sw ¼ nw ¼	"	"	"	120	S. H. B. Scrip 175 "E" R. & R. 314, Oct. 15th, 64.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
Lot 3	13	“	“	34.35	P. C. 2996, Oct. 13th, 66.
Ne ¼ sw ¼	17	“	“	40	P. O. 4792, Mch. 14th, 70.
Lot 4	19	“	“	54.29	P. C. 4447, Mch. 2nd, 69.
Se ¼ se ¼	5	137	25	40	P. C. 4748, Mch. 3rd, 70.
795					
Sw ¼ se ¼	5	137	25	40	P. C. 4455, Mch. 17th, 69.
Se ¼ sw ¼	“	“	“	40	S. H. B. Scrip, 495 “A” R. & R. 355, Oct. 15th, 64.
Sw ¼ sw ¼	“	“	“	40	P. C. 4780, Mch. 3rd, 70.
E ½ nw ¼ nw ¼ nw ¼	7	“	“	120.01	A. C. Scrip, 1309 “Pa.” R. & R. 693, Oct. 3rd, 66
Lot 5	“	“	“	39.06	P. C. 4916, Apr. 29th, 70.
Sw ¼ nw ¼ nw ¼ sw ¼	“	“	“	80.11	S. H. B. Scrip 495 “C” R. & R. 344, Oct. 15th, 64.
Nw ¼	9	“	“	160	A. C. Scrip 816 “Penn” R. & R. 846, Oct. 24th, 66.
Nw ¼ nw ¼	11	“	“	40	P. C. 3273, Feby. 8th, 67.
Se ¼ se ¼	17	“	“	40	P. C. 4928, May 5th, 70.
W ½ ne ¼ E ½ nw ¼	23	“	“	160	M. B. L. W. 3027 R. & R. 3809, Oct. 26th, 66.
Se ¼	“	“	“	160	A. C. Scrip, 815, R. & R. 809, Oct. 18th, 66.
Sw ¼	“	“	“	145.66	A. C. Scrip 814 Penn. R. & R. 808, Oct. 18th, 66.
Ne ¼	25	“	“	160	A. O. Scrip 677 “Ohio” R. & R. 1046, Nov. 25th, 66.
Lot 2—sw ¼ se ¼	“	“	“	79.54	P. C. 2937, Sept. 18th, 66.
Se ¼ sw ¼	“	“	“	40	P. C. 2995, Oct. 12th, 66.
N ½ sw ¼	“	“	“	80	P. C. 3080, Oct. 29th, 66.
Ne ¼	27	“	“	159.63	A. C. Scrip 1334 “Penn” R. & R. 816, Oct. 18th, 66.
Nw ¼ nw ¼ s ½ nw ¼	“	“	“	113.32	A. C. Scrip 1332 Penn” R. & R. 805, Oct. 18th, 66.
Nw ¼ sw ¼ s ½ sw ¼	“	“	“	120	A. C. Scrip 970 “Ky” R. & R. 796, Oct. 18th, 66.
S ½ se ¼	“	“	“	62.43	A. C. Scrip 1333 “Penn” R. & R. 811, Oct. 18th, 66.
Sw ¼	31	“	“	160.07	A. O. Scrip 660 “Conn” R. & R. 63, Dec. 20th, 64.
796					
			N. R.		
Ne ¼	33	137	25	160	A. C. Scrip 1331 Penn. R. & R. 813, Oct. 18th, 66.
E ½ nw ¼	“	“	“	80	M. B. L. W. 104621 R. & R. 3804 1/2, Oct. 18th, 66.
Se ¼	“	“	“	160	A. C. Scrip, 670 R. & R. 51, Nov. 28th, 64.
Sw ¼	33	137	25	160	A. C. Scrip 669 “Vt.” R. & R. Nov. 28th, 64.
Lots 1 & 2,	35	“	“	80	A. C. Scrip 1335 “Ky” R. & R. 798, Oct. 18th, 66.
Lots 3 & 4,	“	“	“	93.42	A. C. Scrip 968 “Ky” R. & T. 800, Oct. 18th, 66.
Se ¼	“	“	“	160	S. H. B. Scrip 576 “D” R. & R. 258, Oct. 14th, 64.
Sw ¼	“	“	“	160	A. C. Scrip 143 “N” R. & R. 169. Nov. 30th, 65.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
E ½ nw ¼ sw ¼ nw ¼	7	138	25	119.13	P. C. 1938, Oct. 19th, 64.
Nw ¼ nw ¼	19	"	"	39.51	P. C. 4880, Apr. 10th, 70.
Ne ¼ se ¼	21	"	"	40	P. C. 3276 Feby. 12th, 67.
W ½ sw ¼ w ½ nw ¼	1	136	26	154.75	M. B. L. W. 103464 R. & R. 3411, Oct. 31st, 64.
Nw ¼ ne ¼	3	"	"	28.55	P. C. 2156, Dec. 20th, 64.
Nw ¼	4	"	"	135.60	A. C. Scrip 663 "Conn" R. & R. 62, Dec. 20th, 64.
Ne ¼ se ¼	"	"	"	40	M. B. L. W. 97067 R. & R. 3412 Oct. 31st, 64.
Ne ¼ sw ¼	"	"	"	40	P. C. 4452, Mch. 15th, 69.
Lot 3	"	"	"	37.33	M. B. L. 104113 R. & R. 3443, Dec. 20th 64.
Nw ¼ sw ¼	"	"	"	40	A. C. Scrip 63 "D" R. & R. 236, Oct. 6th, 64.
Sw ¼	[&]	"	"	155.96	A. C. Scrip 630 "Penn" R. & R. 3021, Apr. 20th, 70.
Lot 2	9	"	"	22.24	P. C. 2152, Dec. 20th, 64.
Sw ¼ nw ¼ nw ¼ sw ¼	"	"	"	80	S. H. B. Scrip 16, "C" R.
797					
		N. W.			
Lot 1 se ¼ nw ¼ ne ¼ sw ¼ nw ¼ se ¼	9	136	26	161.83	M. B. L. W. 102764 R. & R. 3443, Dec. 20th, 64.
Sw ¼ sw ¼	"	"	"	40	S. H. B. Scrip 368 "B" R. & R. 27, Aug. 16th, 64.
Ne ¼ ne ¼ sw ¼ ne ¼	11	"	"	80	M. B. L. W. 101443 R. & R. 3444, Dec. 20th, 64.
Nw ¼ nw ¼	"	"	"	40	P. C. 2169, Dec. 20th. 64.
Nw ¼ sw ¼	"	"	"	40	M. B. L. W. 100708 R. & R. 3410, Oct. 31st, 64.
Ne ¼ se ¼	13	"	"	40	P. C. 4660, Jany. 14th, 70.
Ne ¼ sw ¼	"	"	"	40	P. C. 4794, Mch. 15th, 70.
S ½ sw ¼	"	"	"	80	M. B. L. W. 104112 R. & R. 3441, Dec. 20th, 64.
Nw ¼ se ¼ N ½ ne ¼	15	"	"	160	M. B. L. W. 102826 R. & R. 3445, Dec. 20th, 64.
S ½ nw ¼ W ½ sw ¼	"	"	"	160	S. H. B. Scrip 63 "E" R. & R. 241, Oct. 10th, 64.
Nw ¼	17	"	"	160	A. C. Scrip 5965 "N. Y." R. & R. 3014, Apr. 3rd, 70.
Ne ¼ sw ¼	"	"	"	40	P. C. 4844, Apr. 13th, 70.
Se ¼ sw ¼ W ½ sw ¼	"	"	"	120	P. C. 4818, Apr. 6th, 70.
Ne ¼ ne ¼	21	"	"	40	S. H. B. Scrip 201 "D" R. & R. 238, Oct. 10/64.
Se ¼ ne ¼	"	"	"	40	P. C. 2146, Dec. 20th, 64.
Nw ¼ ne ¼	"	"	26	40	P. C. 2147, Dec. 20th, 64.
Sw ¼ sw ¼	"	"	"	40	P. C. 4715, Oct. 11th, 69.
Nw ¼ nw ¼	23	"	"	40	P. C. 2148, Dec. 20th, 64.
W ½ ne ¼	25	"	"	80	P. C. 4793, Mch. 14th, 70.
Nw ¼	"	"	"	160	A. C. Scrip 661 "Conn" R. & R. 59, Dec. 20/64.
Ne ¼ sw ¼—lots 1 & 2	"	"	"	154.83	P. C. 4752, Jany. 7th, 70.
Nw ¼ ne ¼ ne ¼ nw ¼	27	"	"	80	P. C. 2143, Dec. 20th, 64.

798

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Sw ¼ se ¼	27	136	26	40	S. H. B. Scrip 201 "B" R. & R. 240, Oct. 10th, 64.
Nw ¼ se ¼	27	"	"	40	S. H. B. Scrip 201 "A" R. & R. 239, Oct. 10th, 64.
E ½ sw ¼	"	"	"	80	S. H. B. Scrip 221 "C" R. & R. 237, Oct. 10th, 64.
Ne ¼ se ¼	29	"	"	40	P. C. 4822, Apr. 6th, 70.
Sw ¼ se ¼ se ¼ sw ¼	"	"	"	80	P. C. 4714, Oct. 11th, 69.
Se ¼ se ¼	"	"	"	40	P. C. 4918, May 2nd, 70.
Ne ¼ nw ¼	33	"	"	40	P. C. 2158, Dec. 2nd, 64.
Se ¼ nw ¼	"	"	"	40	P. C. 2232, Apr. 7th, 65.
Sw ¼ nw ¼	"	"	"	40	P. C. 2109, Dec. 2nd, 64.
Lot 2	35	"	"	28.95	P. C. 4755, Jany. 7th, 70.
Nw ¼ nw ¼	1	137	26	40.44	P. C. 3250, Jany. 23rd, 67.
Se ¼ sw ¼	3	"	"	40	P. C. 3145, Dec. 12th, 66.
W ½ sw ¼	"	"	"	80	P. C. 2619, Mch. 13th, 66.
Nw ¼	5	"	"	158.21	A. C. Scrip 41 "Del." R. & R. 3004, May 15th, 69.
Lot 3	"	"	"	31.84	M. B. L. W. 104617 R. & R. 38031/2, Oct. 18th, 66.
Sw ¼	"	"	"	160	A. C. Scrip 1335 "Penn" R. & R. 815, Oct. 18th, 66.
Ne ¼ N ½ nw ¼ W ½ se ¼—Lots 1 & 2	7	"	"	397	P. C. 1945, Oct. 18th, 64.
E ½ se ¼	"	"	"	80	S. H. B. Scrip 453 "D" R. & R. 269, Oct. 15th, 64.
Lot 3	"	"	"	30.94	P. C. 4568, June 4th, 69.
Ne ¼	9	"	"	160	S. H. B. Scrip 473, "D" R. & R. 256, Oct. 13th, 64.
E ½ nw ¼—E ½ sw ¼	"	"	"	160	S. H. B. Scrip 201 "E" R. & R. 347, Oct. 15th, 64.
N ½ ne ¼	11	"	"	80	M. B. L. W. 51928 R. & R. 3702, May 31st, 66.

799

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
Sw ¼ ne ¼	11	137	26	40	S. H. B. Scrip 236, "B" R. & R. 338, Oct. 15th, 64. Canc'l'd Dec. 9th, 72. Hd. 9882, Jany. 26th, 78. F. C. 4132, Jany. 26th, 78.
Se ¼ ne ¼	"	"	"	40	S. H. B. Scrip 236 "A" R. & R. 337, Oct. 15th, 64. Canc'l'd Dec. 9th, 72. Hd. 9882, Jany. 26th, 78. F. C. 4132, Jany. 26th, 78.
Ne ¼ nw ¼	"	"	"	40	P. C. 3148, Dec. 13th, 66.
S ½ nw ¼	"	"	"	80	P. C. May 31st, 66.
Ne ¼ se ¼	"	"	"	40	P. C. 4927, May 5th, 70.
Nw ¼ se ¼ E ½ sw ¼ sw ¼ sw ¼	"	"	"	160	S. H. B. Scrip 203 E. R. & R. 35, Oct. 15th, 64.
Nw ¼	13	"	"	160	A. C. Scrip 2039 Ky. R. & R. 692, Oct. 3rd, 66.
Sw ¼ ne ¼—lot 2	"	"	"	75.69	P. C. 4458, Mch. 17th, 69.
Se ¼	"	"	"	160	A. C. Scrip 564 N. H. R. & R. 1503, Mch. 14th, 67.
Sw ¼	"	"	"	160	S. H. B. Scrip, 863 Penn. R. & R. 691, Oct. 3rd, 66.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS
		N.	W.		
Se ¼ ne ¼	15	“	“	40	P. C. 3149, Dec. 13th, 66.
Nw ¼ ne ¼	“	“	“	40	P. C. 3322, Mch. 16th, 67.
Nw ¼ ne ¼	19	“	“	40	P. C. 4902, Apr. 20th, 70.
Ne ¼ ne ¼	23	“	“	40	P. C. 4408, Jany. 12th 69.
S ½ se ¼—lot 3	“	“	“	132.52	P. C. 4784, Mch. 3rd, 70.
Lot 4	“	“	“	.36	P. C. 5028, June 16th, 70.
W ½ sw ¼	27	“	“	80	M. B. L. W. 94722, R. & R. 3829, Dec. 26th, 66.
Lots 1 & 2 sw ¼ ne ¼	29	“	“	125.49	A. C. Scrip Ohio R. & R. 1246, Dec. 26th, 66.
Nw ¼	“	“	“	160	A. C. Scrip 3115 Ohio R. & R. 1245, Dec. 26th, 66.

800

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS
Se ¼	29	137	26	160	A. C. Scrip 719 Ohio R. & R. 1244, Dec. 26th, 66.
Ne ¼ sw ¼	“	“	“	40	P. C. 4566, June 3rd, 69.
W ½ ne ¼ se ¼ nw ¼	31	“	“	120	P. C. 4515, Apr. 6th, 70.
Lot 6	“	“	“	25.34	P. C. 3146, Dec. 13th, 66.
E ½ se ¼	1	138	26	80	S. H. B. Scrip, 6256, Mch. 6th, 65.
S ½ se ¼	9	“	“	80	School selection Mch. 7th 70. Appd. Sept. 23rd, 74.
Ne ¼ nw ¼ Lot 1	11	“	“	79.97	P. C. 4504, May 7th, 69.
Sw ¼ nw ¼	“	“	“	40	S. H. B. Scrip, 624, B. R. & R. 248, Sept. 12th, 64.
Nw ¼ sw ¼	“	“	“	40	S. H. B. Scrip 361 A. R. & R. 267, Oct. 15th, 64.
Se ¼	13	“	“	160	A. C. Scrip 910 Ky. R. & R. 1346, Jany. 23rd, 67.
Sw ¼ nw	15	“	“	40	P. C. 1949, Oct. 8th, 64.
Nw ¼ nw	17	“	“	40	P. C. 4859, Apr. 14th, 70.
Nw ¼ ne ¼	19	“	“	40	P. C. 4572, June 4th, 69.
S ½ se ¼	23	“	“	80	P. C. 1952, Oct. 18th, 64.
Lot 3 se ¼ ne ¼	27	“	“	65.84	S. H. B. Scrip 494 “C” R. & R. 340, Oct. 15th, 64.
Ne ¼ ne ¼	29	“	“	40	P. C. 4547, June 4th, 69.
Nw ¼ nw ¼	“	“	“	40	P. C. 4573, June 4th, 69.
W ½ ne ¼ E ½ nw ¼	“	“	“	160	P. C. 1954, Oct. 18th, 64.
Nw ¼ se ¼ ne ¼ sw ¼	“	“	“	80	P. C. 1955, Oct. 18th, 64.
Ne ¼ se ¼ s ½ se ¼	“	“	“	120	P. C. 4575, June 4th, 69.
Sw ¼ sw ¼	“	“	“	40	P. C. 4537, May 15th, 69.
N ½ ne ¼	31	“	“	80	P. C. 4538, May 15th, 69.
Se ¼ nw ¼ lot 3	“	“	“	87.31	P. C. 4571, June 3rd, 69.
Lot 5	“	“	“	39.95	P. C. 4535, May 14, 69.

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PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS
			N.	R.	
Ne ¼ ne ¼	35	138	26	40	S. H. B. Scrip 494 “A.” R. & R. 348, Oct. 15th 64.
Nw ¼ ne ¼	“	“	“	40	P. C. 1956, Oct. 18th 64.
Sw ¼ ne ¼	3	135	27	40	P. C. 2245, Apr. 17th 65.
Lot 6	“	“	“	45.60	P. C. 2247, Apr. 17th 65.
Nw ¼ ne ¼	“	“	“	42.17	S. H. B. Scrip 498 “A.” R. & R. 351, Oct. 15th 64.
Lot 2	5	“	“	45.50	M. B. L. W. 7547 R. & R. 3858, Apr. 25th 67.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
Se ¼ se ¼	7	"	"	40	P. C. 3403, May 7th 67.
Se ¼ nw ¼	9	"	"	40	P. C. 4750, Jany. 4th 70
Lots 1 & 2	15	"	"	62.78	School selection Mch. 7th 70. Appd. Sept. 23/74.
Se ¼ ne ¼	17	"	"	40	P. C. 3879, Jany. 16th 68.
N ½ nw ¼	"	"	"	80	M. B. L. W. 7172. R. & R. 3481, Apr. 7th 65.
Sw ¼ se ¼	"	"	"	40	P. C. 3877 Jany. 16th 68.
Se ¼ se ¼	"	"	"	40	P. C. 2618, Mch. 13th 66.
S ½ sw ¼	"	"	"	80	S. H. B. Scrip 479 "C." R. & R. 339, Oct. 5th 64.
Ne ¼ ne ¼	19	"	"	40	S. H. B. Scrip 498 "B." R. & R. 336, Oct. 15th 64.
Se ¼ ne ¼	"	"	"	40	S. H. B. Scrip 497 "B." R. & R. 349, Oct. 15th 64.
Lot 2	"	"	"	36.37	P. C. 3874, Jan. 16th 68.
Lot 4	"	"	"	44.45	P. C. 3875, Jany. 16th 68.
W ½ nw ¼	21	"	"	80	P. C. 3880, June 16th 68.
Ne ¼ sw ¼	"	"	"	40	P. C. 2250, Apr. 17th 65.
Sw ¼ ne ¼ lots 3, 4, 5, 6	1	136	27	180.10	P. C. 4824, Apr. 6th 70.
E ½ nw ¼	"	"	"	74.32	S. H. B. Scrip 386 "C." R. & R. 346, Oct. 15th 64.
Nw ¼	5	"	"	153.57	S. H. B. Scrip 3113 "Ohio." R. & R. 1449, Feb. 12th 67.

802

N. W.

Lots 9 & 10	13	136	27	50	P. C. 2038, Oct. 31st 64.
Se ¼ nw ¼ sw ¼ ne ¼	23	"	"	80	P. C. 4179, Aug. 11th 68.
Ne ¼ nw ¼	23	"	"	40	P. C. 2969, Oct. 3rd 66.
Nw ¼ sw ¼	35	"	"	40	P. C. 4462, Mch. 19th 69.
Lot 2	1	137	27	59.30	P. C. 4570 June 3rd 69.
S ½ se ¼	"	"	"	80	P. C. 1980, Oct. 19th 64.
N ½ se ¼	"	"	"	80	A. C. Scrip 3429 "Ohio." R. & R. 1819, May 17/67.
S ½ nw ¼	"	"	"	80	P. C. 1987, Oct. 19th 64.
Nw ¼ ne ¼	3	"	"	39.73	M. B. L. W. 35038. R. & R. 248, Apr. 18th 68.
Nw ¼	"	"	"	159.29	A. C. Scrip 920 "Ohio." R. & R. 1415, Feb. 7th 67.
Lot 2	5	"	"	55.35	P. C. 3975, Apr. 18th 68.
Lots 3 & 4	"	"	"	64.35	P. C. 4636, July 12th 69.
Lot 6	"	"	"	48.64	P. C. 3963, Apr. 18th 68.
Lot 9	"	"	"	42.91	P. C. 3972, Apr. 18th 68.
Lot 7	7	"	"	39.78	P. C. 3964, Apr. 18th 68.
Lot 9	"	"	"	23.65	P. C. 3971, Apr. 18th 68.
Lot 11	"	"	"	.45	P. C. 3026, June 16th 70.
Se ¼ sw ¼	9	"	"	40	P. C. 4882, Apr. 20th 70.
Ne ¼ ne ¼	"	"	"	40	P. C. 3973, Apr. 18th 68.
Nw ¼ ne ¼	11	"	"	40	P. C. 4508, May 7th 69.
Lot 1	"	"	"	38.04	P. C. 2040, Apr. 31st 64.
Lot 1	13	"	"	42.42	P. C. 3203, Jany. 2nd 67.
Nw ¼ nw ¼	"	"	"	40	P. C. 3205, Jany. 2nd 72.
Lot 5	"	"	"	.38	P. C. 4991, June 1st 70.
Ne ¼	15	"	"	160	A. C. Scrip 993 "Ky." R. & R. 1603, Apr. 19th 67.
Ne ¼ nw ¼—lot 1	"	"	"	67.43	School selection, Oct. 7th 70, Appd. Sept. 23rd 74.

803

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Se ¼ nw ¼	15	137	27	40	P. C. 3000, Oct. 15th 66.
Sw ¼ nw ¼	"	"	"	40	P. C. 4451, Mch. 15th 69.
Se ¼	"	"	"	160	A. C. Scrip 991 "Ky." R. & R. 748, Oct. 15th 66.
Nw ¼ sw ¼	"	"	"	40	S. H. B. Scrip 215 "A." R. & R. 272, Oct. 15th 64.
E ½ sw ¼	"	"	"	80	S. H. B. Scrip 405 "D." R. & R. 274, Oct. 15th 64.
Se ¼ sw ¼	19	"	"	40	P. C. 4580, June 4th 69.
Ne ¼ ne ¼	21	"	"	40	S. H. B. Scrip 216 "A." R. & R. 273, Oct. 15th 64.
Nw ¼ ne ¼ ne ¼ nw ¼	"	"	"	80	P. C. 1992, Oct. 19th 64.
Lot 1	23	"	"	32.40	P. C. 4903, Apr. 2nd 70.
Ne ¼ nw ¼	"	"	"	40	P. C. 2970, Oct. 3rd 66.
W ½ nw ¼	"	"	"	80	P. C. 1994, Oct. 19th 64.
Lot 1	25	137	27	27.73	P. C. 2929, Sept. 17th 66.
Lot 3	"	"	"	21.43	P. C. 2713, May 29th 66.
Lot 4	"	"	"	44.27	P. C. 2939, Sept. 19th 66.
W ½ se ¼ ne ¼ sw ¼	"	"	"	120	M. B. L. W. 904000. R. & R. 3701, May 29th 66.
Lot 7	27	"	"	38.93	P. C. 4735, May 10th 70.
Lots 5 & 6	"	"	"	73.52	P. C. 4934, May 10th 70.
Lot 8	33	"	"	22.32	P. C. 3930, Mch. 23rd 68.
Lot 5	35	"	"	35.76	P. C. 3929, Mch 23rd 68.
Nw ¼ se ¼ lot 6	13	138	27	63.66	P. C. 4506, May 7th 69.
Sw ¼ ne ¼	"	"	"	40	P. C. '3206, Jan. 2nd 67.
Se ¼ ne ¼	"	"	"	40	S. H. B. Scrip "3" R. & R. 366, Oct. 15th 64.
Lot 2	27	"	"	33.04	P. C. 2045, Oct. 31st 64.
Lot 3	"	"	"	33.93	P. C. 3437, May 17th 67.
Sw ¼ se ¼	"	"	"	40	P. C. 2039, Oct. 31st 64.
804					
Lot 4	27	138	27	48.53	P. C. 3435, May 17th 67.
Sw ¼	"	"	"	160	S. H. B. Scrip 771 R. & R. 33 Oct. 31st 64.
Ne ¼ ne ¼	33	"	"	40	P. C. 2044, Oct. 31st 64.
Se ¼ ne ¼ w ½ ne ¼	"	"	"	120	A. C. Scrip 904 "Ky" R. & R. 1799, May 17th 67.
Se ¼	"	"	"	160	A. C. Scrip 672 "Vt." R. & R. 32, Oct. 31st 64.
Nw ¼	"	"	"	160	S. H. B. Scrip 44 "D" R. & R. 233, Sept. 12th 67.
Nw ¼ sw ¼	"	"	"	40	P. C. 2006, Oct. 19th 64.
Sw ¼ sw ¼	"	"	"	40	P. C. 4883, Oct. 20th 70.
E ½ sw ¼	"	"	"	80	P. C. 2043, Oct. 31st 64.
Nw ¼ nw ¼	35	"	"	40	S. H. B. Scrip 1, R. & R. 231, 1864.
Sw ¼ nw ¼	"	"	"	40	S. H. B. Scrip 5476 R. & R. 374, Oct. 15th 64.
E ½ nw ¼	"	"	"	80	A. C. Scrip 222 "N. H." R. & R. 1509 —64.
Ne ¼ sw ¼	"	"	"	40	P. C. 4803, Mch. 26th 70.
Nw ¼ sw ¼	"	"	"	40	P. C. 2070, Oct. 19th 64.
Nw ¼ ne ¼—ne ¼ nw ¼	1	134	28	71.92	C. Scrip R. & R. 5, Dec. 27th 69.

		5th Mer.			
PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
All	27	"	"	485.42	School selection, Mch. 7th 70 Appd. Sept. 23/74.
Sw ¼ se ¼—lot 7	19	137	28	71.72	A. C. Scrip 1533 "Ills" R. & R. 2591, Oct. 10th 67.
Sw ¼ ne ¼—se ¼	21	"	"	277.73	School selection, Mch. 7th 70 Appd. Sept. 23rd 74.
Lot 4—s ½ sw ¼	25	"	"	117.86	A. C. Scrip 1537 "Ills" R. & R. 2590, Oct. 10th 67.
Lots 2 & 3	29	"	"	115.68	A. C. Scrip 1527 "Ills" R. & R. 2484, Oct. 2nd 67.
805					
Se ¼	29	137	28	160	A. C. Scrip 1525 "Ills" R. & R. 2491, Oct. 2nd 67.
Sw ¼	"	"	"	160	A. C. Scrip 1526 "Ills" R. & R. 2496, Oct. 2nd 67.
Sw ¼	31	"	"	160	A. C. Scrip 1528 "Ills" R. & R. 2496, Oct. 2nd 67.
Lots 1 & 2	35	"	"	116.77	A. C. Scrip 1535 "Ills" R. & R. 2490, Oct. 2nd 67.
Sw ¼	"	"	"	160	A. C. Scrip 1536 Ills. R. & R. 2486, Oct. 2nd 67.
Ne ¼ se ¼ lots 1, 2, 5	29	133	29	148	A. C. Scrip 735 S. C. R. & R. 3181, June 14th 71.
Ne ¼ nw ¼ Lot 3	33	"	"	79.75	A. C. Scrip 343 "D" R. & R. 3182, June 20th 71.
Lots 1 & 2	5	134	29	68.85	P. C. 4804, Mch. 26th 70. D. S. 3585, Aug. 24 & 24th 68.
E ½ ne ¼ e ½ se ¼	7	135	29	160	Indian claim selected Mch. 10th 68. Appd. Mch. 17th 68.
N ½ nw ¼	17	"	"	80	Indian claim selected Mch. 10th 68. Appd. Mch. 17th 68.
Lots 1, 2, 3, 4.	35	"	"	109.50	Indian claim treaty Mch 19th 67. Appd. Nov. 3rd 69.
Lots 1, 2, 3, w ½ sw ¼ se ¼ sw ¼	35	137	29	231.60	School selection Mch. 7th 70. Appd. Sept. 23rd 74.
Se ¼ sw ¼ sw ¼ se ¼	1	134	30	80	C. Scrip 183 R. & R. 9 Apr. 20th 70. Canceled May 14th ..
Se ¼ nw ¼ sw ¼ ne ¼	29	"	"	80	C. Scrip R. &. R. 106 July 2nd 70. Canceled Sept. 15th 73. P. C. 761, Oct. 22nd 75.
Ne ¼ nw ¼	31	"	"	40	C. Scrip 22 R & R 199, Apr. 22nd 70. Canceled May 14th 75 P. C. 7462, June 16th 75.
806					
N ½ sw ¼	31	134	30	89.20	C. Scrip 94 D. R. & R. 18 Apr. 20th 70. Canceled May 14th 75. P. C. 7455, June 16th 75.
Sw ¼ nw ¼	5	135	30	40	C. Scrip 213 R. & R. 23, Apr. 29th 70. Canceled May 14th 75. P. C. 7465, June 16th 75.
Sw ¼ sw ¼	17	"	"	40	S. H. B. Scrip 430 D. R. & R. 449, Apr. 23rd 70.
Ne ¼ ne ¼	19	"	"	40	S. H. B. Scrip 430 D. R. & R. 449. Apr. 23rd 70.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
W ½ ne ¼	29	135	30	80	C. Scrip 9 R. & R. 205, Apr. 23rd 70. Canceled May 14th 75. P. C. 7452, June 16th 75.
E ½ nw ¼	"	"	"	80	C. Scrip 52 R. & R. 209, Apr. 23rd 70. Canceled May 14th 75. P. C. 7459, June 16th 75.
W ½ nw ¼	"	"	"	80	C. Scrip 10 R. & R. 204, Apr. 23rd 70. Canceled May 14th 75 P. C. 7457, June 16th 75.
N ½ se ¼	"	"	"	80	C. Scrip 93 R. & R. 202 Apr. 23rd 70. Canceled May 14th 75. P. C. 7461, June 16th 75.
S ½ se ¼	"	"	"	80	C. Scrip 16 R. R. 212, Apr. 23rd 70. Canceled May 14th 75. P. C. 7456, June 16th 75.
Ne ¼ sw ¼	"	"	"	40	C. Scrip 61 R. & R. 205, Apr. 23rd 70. Canceled May 14th 75. P. C. 7460, June 16th 75.
Se ¼ se ¼	31	"	"	40	C. Scrip 150th R. & R. 211, Apr. 23rd 70. Canceled May 14th 75. P. C. 7455, June 16th 75.
S ½ nw ¼	33	"	"	80	C. Scrip 66 R. & R. 209, [—] 23rd 70. Canceled May 14th 75. P. C. 7450, June 16th 75.
807					
Lots 9, 10, 11, 12, 13, 14,—se ¼	7	133	31	374.35	P. C. 5154, Sept. 24th 70.
All	17	"	"	603.93	P. C. 5152, Sept. 20th 70.
Nw ¼ ne ¼ lots 1, 2, 3, 10, 13	19	"	"	229.50	P. C. 5153, Sept. 20th 70.
Nw ¼ sw ¼ s ½ sw ¼	27	"	"	120	A. C. Scrip 288 "Ohio" R. & R. 1229, Janry. 17th 67.
Se ¼ se ¼	29	"	"	40	P. C. 3055, Nov. 2nd 67.
N ½ ne ¼ sw ¼ ne ¼	33	"	"	120	A. C. Scrip 263 "Ky" R. & R. 794, Nov. 7th 66.
S ½ nw ¼ w ½ sw ¼	"	"	"	160	S. H. R. Scrip 495 E R. & R. 300, Oct. 15th 64.
N ½ se ¼ ne ¼ sw ¼ se ¼ ne ¼	"	"	"	160	S. H. R. Scrip 101 D., R. & R. 315, Oct. 15th 64.
Sw ¼ se ¼	"	"	"	40	P. C. 415, Dec. 2nd 67.
Se ¼ sw ¼	33	133	31	40	P. C. 3232, Janry. 12th 67.
Nw ¼	35	"	"	160	A. C. Scrip 414 N. H., R. & R. 1616, Apr. 23rd 67.
Nw ¼ ne ¼	7	130	32	40	P. C. 6719, Oct. 20th 69.
Lot 1	"	"	"	7.10	P. C. 5504, July 21st 71.
Lot 3, sw ¼ ne ¼	"	"	"	79.97	P. C. 2910, Sept. 3rd 66.
Lot 4	"	"	"	23.64	P. C. 3163, Dec. 15th 66.
Lot 6	"	"	"	28.75	P. C. 2571, Dec. 9th 65.
Lot 7—ne ¼ sw ¼	"	"	"	90.23	M. B. L. W. 93819 R. & R. 2030, Dec. 15th 65.
Nw ¼ ne ¼	19	"	"	40	M. B. L. W. 75062 R. & R. 3765, Aug. 10th 66.
Ne ¼ ne ¼	3	132	32	44.17	S. H. R. Scrip 105 E R. & R. 310, Oct. 15th 64.
Ne ¼ se ¼	15	"	"	40	P. C. 3190, Janry. 2nd 67.
Nw ¼ ne ¼	"	"	"	40	S. H. R. Scrip 105 B. R. & R. 319, Oct. 15th 64.
Nw ¼ sw ¼	23	"	"	40	P. C. 3169, Janry. 2nd 67.

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5th-Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
			N. W.		
Se ¼ sw ¼	23	132	32	40	P. C. 3188, Jany 2nd 67.
Nw ¼ nw ¼	5	133	32	30.74	S. H. B. Scrip 436 R. & R. 356, Oct. 15th 64.
Se ¼ nw ¼	"	"	"	40	S. H. B. Scrip 618 A. R. & R. 357, Oct 15th 64.
Se ¼ sw ¼—s ½ se ¼	7	"	"	120	School selection, Mch 7th 70, Appd. Sept. 23rd 74.
N ½ nw ¼	19	"	"	72.21	S. H. B. Scrip 497 E. R. & R. 362, Oct. 15th 64.
N ½ ne ¼	29	"	"	80	A. C. Scrip 1744 "Ky" R. & R. 621, Sept. 18th 66.
Sw ¼ sw ¼	31	"	"	39.83	P. C. 3195 Jany. 2nd 67.
Nw ¼	33	"	"	160	A. C. Scrip 1745 Ky. R. & R. 623, Sept. 8th 64.
Lot 3	"	"	"	48.79	P. C. 2915, Sept. 11th 66.
Se ¼ sw ¼	35	"	"	40	P. C. 3196, Jany. 2nd 67.
W ½ ne ¼	25	135	32	80	C. Scrip 116 D. R. & R. 213, Apr. 20th 70. Canceled May 14th 75. P. C. 7466, June 16th 75.
Nw ¼ ne ¼	1	130	33	40.84	P. C. 5194, Nov. 24th 70.
S ½ ne ¼	"	"	"	80	P. C. 5215, Dec. 14th 70.
Ne ¼ nw ¼	"	"	"	41.40	P. C. 5195, Mch. 24th 70.
Se ¼	"	"	"	160	A. C. Scrip 924 "Ky" R. & R. 2084, June 26th 67.
Sw ¼ sw ¼	"	"	"	40	P.C. 5268, Jany. 11th 71.
Se ¼ sw ¼	"	"	"	40	Hd. 6908, Mch. 24th 71. F. C. 4071, Nov. 22nd 77.
Nw ¼	3	"	"	162.08	A. C. Scrip 866 R. & R. 706, Oct. 4th 66.
Ne ¼	"	"	"	160.55	Hd. 6430, May 7th 70. F. C. 3842, Dec. 28th 76.

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		N.	W.		
Se ¼	3	130	33	160	Hd. 5772, Nov. 25th 68. F. C. 1738, Dec. 2nd 73.
W ½ sw ¼	"	"	"	80	Hd. 5553, Sept. 15th 68. F. C. 1737, Dec. 2nd 73.
Ne ¼	5	"	"	163.53	Hd. 7218, July 26th 71. F. C. 4318, July 23rd 78.
E ½ nw ¼ nw ¼ nw ¼	"	"	"	129.04	P. C. 7212, July 25th 71. F. C. 4278, July 2nd 78.
Ne ¼ sw ¼ s ½ sw ¼	"	"	"	120	A. C. Scrip 277 N. J. R. & R. 187, Jany. 1st 66.
Ne ¼	7	"	"	160	A. C. Scrip 1266 Maine R. & R. 3133, Oct. 10th 70.
Nw ¼	"	"	"	157.91	M. B. L. W. 111195 R. & R. 4297, Apr. 4th 71.
Sw ¼	"	"	"	155.85	P. C. 5245, Dec. 24th 70.
S ½ se ¼	"	"	"	80	P. C. 6452, May 18th 70. F. C. 3410, Dec. 27th 75. Amended. See Sec. 7-129 N.-33 W. P. C. 6699, July 23rd 73, C. C. 6858.
Se ¼ se ¼	9	"	"	40	Hd. 540, June 19th 68. F. C. 2819, Jany. 4th 75.
Ne ¼	"	"	"	160	A. C. Scrip 246 R. & R. 707, Oct. 4th 66.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS
		N.	W.		
Nw ¼ nw ¼ e ½ nw ¼	"	"	"	120	Hd. 2577, May 28th 66. F. C. 939, Feb. 12th 72.
Ne ¼ sw ¼ nw ¼ se ¼	"	"	"	80	Hd. 5869, Feb. 24th 69. F. C. 2117, Aug. 20th 74.
Se ¼ sw ¼ sw ¼ se ¼	"	"	"	80	Hd. 5658, Oct. 12th 68. F. C. 2116, Aug. 20th 74.
Sw ¼	11	"	"	160	Hd. 6723, Nov. 12th 70. F. C. 4072, Nov. 22nd 77.
Se ¼	"	"	"	160	Hd. 6767, Dec. 13th 70. F. C. 4050, Nov. 5th 77.
Nw ¼	"	"	"	160	Hd. 6870, Feb. 23rd 71. F. C. 4074, Nov. 22nd 77.
810					
Nw ¼	13	130	33	160	Hd. 6707, Oct. 29th, F. C. 3915, Dec. 23rd 76.
E ½ ne ¼	15	"	"	80	Hd. 6063, July 2nd 69, F. C. 2814, Jany. 4th 75.
Nw ¼ ne ¼	17	"	"	40	P. C. 4615, July 2nd 69.
Nw ¼	"	"	"	160	Hd. 2067 Nov. 6th 65, F. C. 941, Feb. 12th 72.
Nw ¼ se ¼	"	"	"	40	Hd. 2524, May 18th 66, F. C. 685, May 24th 71.
Nw ¼ se ¼ ne ¼ sw ¼	1	131	33	80	P. C. 2500, Oct. 19th 65.
S ½ nw ¼ nw ¼ nw ¼	3	"	"	132.20	P. C. 5240, Dec. 24th 70.
W ½ se ¼ se ¼ se ¼ se ¼ sw ¼	"	"	"	160	Hd. 6665, Mch. 21st 70, F. C. 3088, June 22nd 75.
Ne ¼ sw ¼ w ½ sw ¼	"	"	"	120	P. C. 5060, July 26th 70.
S ½ ne ¼ n ½ se ¼	5	"	"	160	M. B. L. W. 110469 R. & R. 4231, Oct. 29th 70.
Se ¼ nw ¼ n ½ sw ¼	"	"	"	120	M. B. L. W. 10498 R. & R. 4266, Dec. 30th 70.
W ½ nw ¼ se ¼ nw ¼	7	"	"	117.64	P. C. 5228, Dec. 20th 70.
Sw ¼	"	"	"	158.92	M. B. L. W. 110528 R. & R. 4271, Dec. 30th 70.
E ½ ne ¼ e ½ se ¼	9	"	"	160	M. B. L. W. 10261 R. & R 4219, Oct. 11th 70.
Nw ¼	"	"	"	160	M. B. L. W. 10217 R. & R. 4224, Oct. 26th 70.
Sw ¼	"	"	"	160	M. B. L. W. 110483, R. & R. 4227, Oct. 26th 70.
N ½ nw ¼	11	"	"	80	Hd. 6384, Apr. 11th 70, F. C. 3805, Dec. 23rd 76.
Sw ¼ nw ¼	"	"	"	40	P. C. 5120, Sept. 14th 70.
Ne ¼	15	"	"	160	Hd. 5639, Oct. 6th 68, F. C. 2821, Jany. 4th 75.
Nw ¼	"	"	"	160	A. C. Scrip 5661 N. Y. R. & R. 3082, June 29th 70.

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5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		T.	R.		
N ½ se ¼ sw ¼ se ¼ ne ¼ sw ¼	15	131	33	160	Hd. 5248, July 10th 68, F. C. 3148, June 21st 75.
W ½ sw ¼ se ¼ sw ¼	"	"	"	120	P. C. 5059, July 26, 70.
Se ¼ ne ¼ w ½ ne ¼ nw ¼ se ¼	17	"	"	160	M. B. L. W. 110480 R. & R. 267, Dec. 30th 70.
Nw ¼	"	"	"	160	M. B. L. W. 77030 R. & R. 4245, Dec. 1st 70.
E ½ se ¼ sw ¼ se ¼	"	"	"	120	P. C. 5184, Nov. 8th 70.
S ½ ne ¼ e ½ se ¼	19	"	"	160	P. C. 5183, Nov. 8th 70.
Nw ¼ ne ¼ ne ¼ nw ¼	"	"	"	80	P. C. 5190, Nov. 16th 70.
Se ¼ nw ¼ w ½ nw ¼	"	"	"	120.75	P. C. 5227, Dec. 20th 70.
Sw ¼	"	"	"	161.32	M. B. L. W. 111638 R. & R. 4370, Aug. 12th 71.
Ne ¼	21	"	"	160	A. C. Scrip 5660 N. Y., R. & R. 3081, June 29th 70.
Nw ¼	"	"	"	160	A. C. Scrip 5694 N. Y. R. & R. 3094, July 26th 70.
Sw ¼	"	"	"	160	A. C. Scrip 865 Penn. R. & R. 705, Oct. 3rd 66.
Ne ¼ nw ¼ s ½ nw ¼	23	"	"	120	Hd. 6387, Apr. 13th 70. F. C. June 21st 75
Sw ¼ sw ¼ e ½ sw ¼	"	"	"	120	P. C. 4955, May 18th 70.
Nw ¼ sw ¼	"	"	"	40	Hd. 6361, Mch. 17, 70. F. C. 3374, Dec. 24th 75.
Ne ¼	27	"	"	160	Hd. 2590, May 30th 66, F. C. 1120, Sept. 16th 72.
E ½ nw ¼ sw ¼ nw ¼	"	"	"	120	Hd. 6807, Jany. 11th 71, F. C. 3745, Nov. 25th 76.
Se ¼	"	"	"	160	A. C. Scrip 821 Maine R. & R. 286, May 30th 66.
Lots 1 & 2—n ½ sw ¼	"	"	"	143.79	A. C. Scrip 822 Maine R. & R. 284, May 30th 66.
E ½ nw ¼ sw ¼ nw ¼	29	"	"	120	Hd. 7238, Aug. 12th 71, F. C. 4330, Aug. 16th 78.
Se ¼	"	"	"	160	A. C. Scrip 1068 Penn. R. & R. 738, Oct. 10th 66.

812

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
W ½ sw ¼	29	131	33	80	D. S. 2725, July 25 & 30 70, Hd. 12762, June 19th 84, F. C. 7392, Dec. 1st 90.
E ½ sw ¼	"	"	"	80	D.. S. 2725, July 25th & 30th 70 Hd. 9044, Feb. 24th 75, F. C. 5558, June 2nd 84.
Ne ¼ ne ¼	31	"	"	40	P. C. 5538, Sept. 6th 71.
Nw ¼ ne ¼	"	"	"	40	P. C. 5563, Sept. 26th 71.
Se ¼ ne ¼	"	"	"	40	P. C. 5255, Jany. 3rd 71.
Sw ¼ ne ¼	"	"	"	40	P. C. 4686, Aug. 30th 69.
N ½ nw ¼	"	"	"	79.99	Hd. 6862, Feby. 10th 71. F. C. 4172, Mch 2nd 78.
S ½ nw ¼	"	"	"	79.08	P. C. 5099, Aug. 26th 70.
S ½ se ¼ s ½ sw ¼	"	"	"	157.26	Hd. 7273, Sept. 6th 71. F. C. 4317, July 20th 78.
N ½ se ¼ n ½ sw ¼	"	"	"	158.17	Hd. 6725, Nov. 14th 70. F. C. 3111, Dec. 26th 76.
Lots 1 & 2—w ½ ne ¼	33	"	"	145.55	Hd. 2210, Nov. 23rd 65, F. C. 615, Dec. 30th 70.
W ½ nw ¼ nw ¼ sw ¼	"	"	"	120	Hd. 7224, July 28th 71, F. C. 4319, July 23rd 78.
N ½ se ¼ ne ¼ sw se ¼ nw ¼	"	"	"	160	Hd. 6040, June 18th 69, F. C. 2813, Jany. 4th 75.
S ½ sw ¼ s ½ se ¼	"	"	"	160	M. B. L. W. 7613 R. & R. 4295, Mch. 20th 71 Com. Hd. 6278, Dec. 24th 69.
W ½ nw ¼	35	"	"	80	D. S. 3074, June 2 & 8th 71 Hd. 14269, Mch. 7th 88, F. C. 7676, Nov. 10th 71.,
Nw ¼ sw ¼	"	"	"	40	D. S. 3074, June 2 & 8th 71, P. C. 18786, Mch. 23rd 79.
Ne ¼	3	132	33	162.64	A. C. Scrip 920 Conn. R. & R. 626, Sept. 14th 66.
Ne ¼ nw ¼	"	"	"	41.50	P. C. 4430, Feb. 20th 69.
813					
Se ¼ nw ¼	3	132	33	40	P. C. 4429, Feb. 20th, 69.
Sw ¼ nw ¼	"	"	"	40	P. C. 4431, Feb. 20th, 67.
S ½ se ¼ se ¼ sw ¼	"	"	"	120	M. B. L. W. 76400 R. & R. 3786, Sept. 15th, 66.
Sw ¼ se ¼	5	"	"	40	P. C. 4312, Oct. 28th, 68.
N ½ ne ¼	7	"	"	80	S. H. B. Scrip 186 E. R. & R. 279, Oct. 15th, 64.
S ½ ne ¼	"	"	"	80	S. H. B. Scrip 455 E. R. & R. 281, Oct. 15th, 64.
Ne ¼ nw ¼	"	"	"	40	S. H. B. Scrip 396, D. R. & R. 277, Oct. 15th, 64.
Se ¼ nw ¼	"	"	"	40	S. H. B. Scrip 396 A. R. & R. 286, Oct. 15th, 64.
Se ¼	"	"	"	160	A. C. Scrip 538 Ohio R. & R. 1947, June 8th, 67.
W ½ nw ¼ sw ¼	"	"	"	208.55	P. C. 5159, Oct. 1st, 70.
Ne ¼ ne ¼	15	"	"	40	P. C. 3155, Dec. 13th, 66.
Nw ¼ ne ¼ ne ¼ nw ¼	"	"	"	80	P. C. 4311, Oct. 28th, 68.

		5th Mer.			
PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Sw ¼ se ¼	17	"	"	40	S. H. B. Scrip 396 B. R. & R. 282, Oct. 15th, 64.
Se ¼ se ¼	"	"	"	40	P. C. 3348, Apr. 9th, 67.
Sw ¼	"	"	"	160	A. C. Scrip, 1363 Penn. R. & R. 3132, Oct. 8th, 70.
Ne ¼	19	"	"	160	M. B. L. W. 110174 R. & R. 4218, Oct. 10th, 70.
Nw ¼ nw ¼ sw ¼	"	"	"	182.75	M. B. L. W. 111398 R. & R. 4344, May 2nd, 71.
Se ¼	"	"	"	160	M. B. L. W. 111454 R. & R. 4345, May 2nd, 71.
Sw ¼ ne ¼	21	"	"	40	P. C. 3494, June 8th, 67.
E ½ nw ¼ ne ¼ sw ¼ nw ¼ sw ¼	"	"	"	160	S. H. B. Scrip 512 D. R. & R. 290, Oct. 15th, 64.
Sw ¼ nw ¼	"	"	"	40	S. H. B. Scrip 183 C R. & R. 275, Oct. 15th, 64.
814					
Ne ¼ se ¼	21	132	33	40	P. C. 2612, Mch. 2nd, 66.
Sw ¼ se ¼	"	"	"	40	P. C. 2611, Mch. 2nd, 66.
Nw ¼ se ¼	"	"	"	40	P. C. 2621, Mch. 2nd, 66.
Se ¼ se ¼	"	"	"	40	S. H. B. Scrip 186 D. R. & R. 278, Oct. 15th, 64.
S ½ sw ¼	"	"	"	80	S. H. B. Scrip 185 D. R. & R. 288, Oct. 15th, 64.
Nw ¼	23	"	"	160	Hd. 7099, June 7th, 71, F. C. 3919, June 1st, 77.
Sw ¼ se ¼	25	"	"	40	School selection Mch. 7th, 70. Appd. Sept. 23rd, 74.
Sw ¼	"	"	"	160	A. C. Scrip 543 "Ohio" R. & R. 1949, June 8th, 67.
Ne ¼	27	"	"	160	A. C. Scrip 541 Ohio R. & R. 1948, June 8th, 67.
Se ¼ nw ¼	"	"	"	40	P. C. 2545, Nov. 24th, 65.
Nw ¼ nw ¼	"	"	"	40	S. H. B. Scrip 186 D. R. & R. 278, Oct. 15th, 64.
Ne ¼ nw ¼	"	"	"	40	S. H. B. Scrip 183 "E" R. & R. 285, Oct. 15, 64.
E ½ sw ¼	"	"	"	80	M. B. L. W. 105141—Sept. 15th, 66.
Nw ¼ sw ¼	"	"	"	40	S. H. B. Scrip 206 C, R. & R. 276, Oct. 15th, 64.
Sw ¼ sw ¼	"	"	"	40	P. C. 3154, Dec. 14th, 66.
Ne ¼ ne ¼	29	"	"	40	M. B. L. W. 15638 R. & R. 3829 ½, Dec. 13th, 66.
Se ¼	"	"	"	160	A. C. Scrip 1365 Tenn. R. & R. 3130, Oct. 8th, 70.
Sw ¼	"	"	"	160	S. H. B. 1264 Maine R. & R. 3129, Oct. 8th, 70.
Ne ¼	31	"	"	160	M. B. L. W. 111217 R. & R. 4291, Feb. 15th, 71.
Nw ¼	"	"	"	152.50	M. B. L. W. 111104 R. & R. 4290, Feb. 15th, 71.
815					
W ½ se ¼ e ½ sw ¼	31	132	33	160	M. B. L. W. 110988 R. & R. 4292, Feb. 15th, 71.
Ne ¼ ne ¼	33	"	"	40	P. C. 3941, Apr. 4th, 68.
Nw ¼ ne ¼	"	"	"	40	P. C. 3895, Feb. 7th, 68.
Nw ¼ nw ¼	"	"	"	40	M. B. L. W. 39373 R. & R. 4220, Oct. 19th, 70.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Se ¼ se ¼	35	"	"	40	P. C. 3497, June 8th, 67.
Sw ¼ se ¼	1	133	33	40	P. C. 139, Dec. 11th, 66.
Nw ¼	3	"	"	153.87	A. C. Scrip 3396, Ohio R. & R. 1232, Dec. 24th, 66.
Se ¼ ne ¼—ne ¼ se¼	5	"	"	80	P. C. 4434, Feb. 20th, 69.
Se ¼ nw ¼ sw ¼ ne ¼	7	"	"	80	P. C. 4432, Feb. 21st, 69.
Se ¼	"	"	"	160	A. C. Scrip 3274 Penn. R. & R. 2356, Aug. 22nd, 67.
E ½ ne ¼—lot 1	9	"	"	134.58	A. C. Scrip 10073—Penn R. & R. 709, Oct. 5th, 66.
Lots 6 & 7	"	"	"	109.11	A. C. Scrip 1310 Penn. R. & R. 710, Oct. 5th, 66.
Lot 4	"	"	"	52.62	P. C. 4435, Feb. 20th, 69.
Ne ¼	11	"	"	160	A. C. Scrip 361 N. H. R. & R. 1519, Aug. 20th, 67.
Se ¼ sw ¼	"	"	"	40	P. C. 5192, Nov. 16th, 70.
Ne ¼	17	"	"	160	A. C. Scrip 535 Ohio R. & R. 1929, June 7th, 67.
Nw ¼	"	"	"	160	A. C. Scrip 529 Ohio R. & R. 1930, June 7th, 67.
Sw ¼	"	"	"	160	A. C. Scrip 534 Ohio R. & R. 1951, June 8th, 67.
W ½ se ¼	"	"	"	80	A. C. Scrip 528 Ohio R. & R. 1931, June 7th, 67.
Ne ¼ nw ¼	19	"	"	40	P. C. 3647, Aug. 22nd, 67.
S ½ nw ¼ e ½ sw ¼ nw ¼ sw ¼	"	"	"	198.31	P. C. 5157, Oct. 1st, 70.
Nw ¼ se ¼	"	"	"	40	P. C. 4850, Apr. 13th, 70.
816					
Sw ¼ se ¼	19	133	33	40	P. C. 3651, Aug. 22nd, 67.
Sw ¼ se ¼	21	"	"	40	P. C. 4441, Feb. 20th, 69.
W ½ sw ¼	"	"	"	80	A. C. Scrip 431 Ohio R. & R. 1935, Apr. 1st, 67.
Nw ¼ se ¼	23	"	"	40.	M. B. L. W. 94470 R. & R. 3487, May 26th, 65.
E ½ se ¼	"	"	"	80	A. C. Scrip 837 Ohio R. & R. 1240, Dec. 24th, 66.
Sw ¼ se ¼ se ¼ sw ¼	"	"	"	80	M. B. L. W. 44336 R. & R. 3491, May 26th, 66.
Sw ¼ sw ¼	"	"	"	40	P. C. 4437, Feb. 20th, 69.
Nw ¼ ne ¼ s ½ ne ¼ se ¼ nw ¼	27	"	"	160	M. B. L. W. 106447 R. & R. 4061, Oct. 16th, 68.
W ½ se ¼ ne ¼ se ¼	"	"	"	120	A. C. Script 216 Maine R. & R. 2984, Nov. 20th, 68.
Sw ¼	"	"	"	160	A. C. Scrip 3276 Penn. R. & R. 2359, Aug. 22nd, 67.
W ½ ne ¼	29	"	"	80	P. C. 4470, Mch. 30th, 69.
E ½ sw ¼	"	"	"	80	P. C. 438, May 20th, 69.
Sw ¼ sw ¼	"	"	"	40	S. H. B. Scrip 486 D. R. & R. 333, Oct. 15th, 64.
W ½ nw ¼ nw ¼ sw ¼	"	"	"	120	S. H. B. Scrip 485 D. R. & R. 331, Oct. 15th, 64.
Ne ¼ ne ¼	31	"	"	40	S. H. B. Scrip 486, D. R. & R. 333, Oct. 15th, 64.
Nw ¼	"	"	"	157.60	A. C. Scrip 2270 Penn. R. & R. 2354, Aug. 22nd, 67.
Sw ¼	31	"	"	159.20	A. C. Scrip 542 Ohio R. & R. 1927, Apr. 1st, 67.

			5th Mer.		
PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼ ne ¼ w ½ ne ¼	33	"	"	120	A. C. Scrip 3273 Penn. R. & R. 2357, Aug. 22nd, 67.
Nw ¼	"	"	"	160	A. C. Scrip 539 Ohio R. & R. 1950, June 8th, 67.
Nw ¼ se ¼	"	"	"	40	P. C. 4310, Oct. 28th, 68.
817					
Sw ¼ sw ¼	9	134	33	40	School selection Mch. 7th 70, Appd Apr. 23rd 74.
Lot 6	11	"	"	39.87	P. C. 4471, Mch. 21st 69.
Lots 1, 2, 6 nw ¼ ne ¼	15	"	"	145.29	A. C. Scrip 196 N. Y. R. & R. 65, Dec. 22nd 64.
Sw ¼	"	"	"	160	A. C. Scrip 1730 Ky. R. & R. 613, Sept. 3rd 66.
Ne ¼	21	"	"	160	A. C. Scrip 1729 Ky. R. & R. 612, Sept. 3rd 66.
W ½ nw ¼ nw ¼ sw ¼	27	"	"	120	M. B. L. W. 104934 R. & R. 3781, Sept. 12th 66.
Ne ¼ ne ¼ w ½ ne ¼	33	"	"	120	A. C. Scrip 1734 Ky. R. & R. 620, Sept. 8, 66.
E ½ nw ¼ ne ¼ sw ¼	"	"	"	120	M. B. L. W. 104705 R. & R. 3780, Sept. 8th 66.
Sw ¼ nw ¼	"	"	"	40	P. C. 4555, May 20th 69.
Lot 9	11	135	33	39	D. S. 3958, Feb. 2 & 3 70.
Sw ¼ sw ¼	"	"	"	40	D. S. 3927, July 16 & Feb. 11th 69.
Lot 4	25	"	"	43.50	School selection, Mch. 7th 70. Appd. Sept. 23rd 74.
Se ¼ nw ¼ lot 5	3	136	33	91.50	C. Scrip 21 C. R. & R. 3 Nov. 12th 68.
Nw ¼ se ¼ lots 6 & 7	"	"	"	101.50	C. Scrip 230 C. R. & R. 2 Nov. 14th 68.
S ½ sw ¼ n ½ sw ¼	9	"	"	160	P. C. 4992, June 2nd 70. D. S. 3623, Sept. 27th & 30th 68.
Ne ¼ nw ¼	"	"	"	40	C. Scrip 73 C. R. & R. 81, Oct. 27th 68.
Ne ¼ nw ¼	19	137	33	40	D. S. 3783, June 6 & 17th 69.
W ½ se ¼—ne ¼ se ¼	21	"	"	120	P. C. 4785, Mch. 4th 70.
Sw ¼ sw ¼	29	"	"	40	P. C. 4425, May 4th 70.
818					
Ne ¼ ne ¼	31	137	33	40	P. C. 4925, May 4th 70.
E ½ ne ¼—nw ¼ ne ¼	1	130	34	121.27	Hd. 621, Aug. 5th 69, F. C. 3596, May 22nd 76.
Sw ¼ ne ¼	"	"	"	40	P. C. 5017, June 4th 70.
Nw ¼	"	"	"	163.76	A. C. Scrip 5647 N. Y. R. & R. 3076, June 4th 70.
Se ¼	"	"	"	160	Hd. 5999, May 31st 69, F. C. 3595, May 22nd 76.
Sw ¼	"	"	"	160	A. C. Scrip 5650 N. Y. R. & R. 33, June 2nd 70.
W ½ ne ¼	3	"	"	81.43	P. C. 5387, Apr. 15th 71.
W ½ nw ¼—ne ¼ nw ¼ nw ¼ sw ¼	"	"	"	62.11	P. C. 5395, Apr. 15th 71.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
E ½ se ¼	3	130	34	80	P. C. 5390, Apr. 15th 71.
W ½ ne ¼	9	"	"	80	M. B. L. W. 111311 R. & R. 4331, Apr. 17th 71.
Ne ¼	11	"	"	160	A. C. Scrip 5649 N. Y. R. & R. 3054, June 2nd 78.
Nw ¼	"	"	"	160	A. C. Scrip 5654 N. Y. R. & R. 3056, June 2nd 70.
Se ¼	"	"	"	160	A. C. Scrip 5651 N. Y. R. & R. 3057, June 2nd 70.
Sw ¼	"	"	"	160	A. C. Scrip 5655 N. Y. R. & R. June 2nd 70.
Ne ¼	13	"	"	160	M. B. L. W. 109455 R. & R. 243, Nov. 28th 70.
E ½ nw ¼	"	"	"	80	P. C. 5214, Dec. 24th 70.
S ½ ne ¼—s ½ nw ¼	1	131	34	160	P. C. 5218, Dec. 16th 70.
W ½ se ¼	"	"	"	80	P. C. 5219, Dec. 16th 70.
Sw ¼	"	"	"	160	P. C. 5217, Dec. 16th 70.
Se ¼	3	"	"	160	M. B. L. W. 111560 R. & R. 4318, Apr. 15th 71.
Sw ¼	"	"	"	160	N. B. L. W. 111561 R. & R. 4319, Apr. 15th 71.
819					
S ½ ne ¼—n ½ se ¼	5	131	34	160	M. B. L. W. 111422 R. & R. 4320, Apr. 15 71.
Sw ¼ nw ¼	"	"	"	40	M. B. L. W. 109742 R. & R. 4111, June 2nd 70.
Sw ¼ se ¼	"	"	"	40	M. B. L. W. 109910 R. & R. 4146, June 24th 70.
Sw ¼	"	"	"	160	M. B. L. W. 108930 R. & R. 4145, June 24th 70.
Se ¼	7	"	"	160	M. B. L. W. 109821 R. & R. 4167, June 24th 70.
E ½ sw ½	"	"	"	80	M. B. L. W. 108986 R. & R. 4146, June 24th 70.
W ½ sw ¼	"	"	"	74.73	P. C. 5001, June 4th 70.
Ne ¼	9	"	"	160	M. B. L. W. 111425 R. & R. 4321, Apr. 15th 71.
Ne ¼	11	"	"	160	M. B. L W. 109638 R. & R. 4118, June 4th 70.
E ½ nw ¼ e ½ sw ¼	"	"	"	160	P. C. 5238, Dec. 24th 70.
Se ¼	"	"	"	160	M. B. L. W. 109634 R. & R. 4123, June 4th 70.
Sw ¼ sw ¼	"	"	"	40	M. B. L. W. 101584 R. & R. 4285, Feb. 7th 71.
E ½ ne ¼ sw ¼ ne ¼ se ¼ nw ¼	13	"	"	160	M. B. L. W. 110563 R. & R. 4272, Dec. 30th 70.
W ½ nw ¼	"	"	"	80	P. C. 5237, Dec. 24th 70.
N ½ se ¼—n ½ sw ¼	"	"	"	160	M. B. L. W. 110580 R. & R. 4273, Dec. 30th 70.
Ne ¼	15	"	"	160	M. B. L. W. 110986 R. & R. 4286, Feb. 7th 71.
Sw ¼	"	"	"	160	M. B. L. W. 109855 R. & R. 4160, June 24th 70.
W ½ ne ¼—se ¼ ne ¼	17	"	"	120	M. B. L. W. 109541 R. & R. 4149, June 24th 70.
Nw ¼	"	"	"	160	M. B. L. W. 109877 R. & R. 4153, June 24th 70.

820

		5th Mer.			
PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Se ¼	17	131	34	160	A. C. Scrip 16 29 N. C. R. & R. 3026, May 16th 70.
Sw ¼	"	"	"	160	A. C. Scrip 1639 N. C. R. & R. 3023, May 16th 70.
Ne ¼	19	"	"	160	M. B. L. W. 109835 R. & R. 4164, June 24th 70.
E ½ nw ¼	"	"	"	80	M. B. L. W. 109899 R. & R. 4165, June 24th 70.
W ½ nw ¼	"	"	"	66.89	P. C. 4999, June 4th 70.
Se ¼	"	"	"	160	M. B. L. W. 109831 R. & R. 4162, June 24th 70.
Ne ¼	21	"	"	160	M. B. L. W. 109900 R. & R. 4148, June 24th 70.
Nw ¼	"	"	"	160	M. B. L. W. 109714 R. & R. 4159, June 24th 70.
Se ¼	"	"	"	160	M. B. L. W. 109698 R. & R. 4157, June 24th 70.
Ne ¼ sw ¼	"	"	"	40	P. C. 5003, June 4th 70.
S ½ sw ¼	"	"	"	80	M. B. L. W. 109916 R. & R. 4171, June 24th 70.
E ½ ne ¼—sw ¼ ne ¼	23	"	"	120	D. S. 4047, Dec. 20 & 28th 70, Hd. 1031, May 20th 78, F. C. 5428, Nov. 7th 83.
Nw ¼	"	"	"	160	M. B. L. W. 109834 R. & R. 4424, June 4th 70.
Se ¼	"	"	"	160	D. S. 2913, Feb. 1 & 3rd 71, Hd. 7422, Jany. 23rd 72. F. C. 4440, Jany. 2nd 79.
Sw ¼	"	"	"	160	A. C. Scrip 5937 N. Y. R. & R. 3029, May 16th 70.
E ½ ne ¼—nw ¼ ne ¼	25	"	"	120	M. B. L. W. 109865 R. & R. 4139, June 11th 70.
W ½ nw ¼ se ¼ nw ¼ sw ¼ ne ¼	"	"	"	160	M. B. L. W. 82673 R. & R. 4298, Apr. 4th 71.
Se ¼	"	"	"	160	M. B. L. W. 109717 R. & R. 4114, June 2nd 70.
Ne ¼ sw ¼	"	"	"	40	P. C. 4953, May 24th 70.

821

Nw ¼ sw ¼	25	131	34	40	P. C. 4954, May 24th 70.
Se ¼ sw ¼	"	"	"	40	P. C. 4952, May 24th 70.
Sw ¼ sw ¼	"	"	"	40	P. C. 4951, May 24th 70.
Ne ¼ ne ¼	27	"	"	40	P. C. 4959, May 24th 70.
Nw ¼ ne ¼	"	"	"	40	P. C. 4961 May 24th 70.
S ½ ne ¼—n ½ se ¼	"	"	"	160	Hd. 6373, Apr. 4th 70, F. C. 3788, Dec. 23rd 76.
Nw ¼	"	"	"	160	A. C. Scrip 5636 N. Y. R. & R. 3022, May 16th 70.
S ½ se ¼	"	"	"	80	P. C. 5009, June 4th 70.
Sw ¼	"	"	"	160	A. C. Scrip 5939 N. Y. R. & R. 3031, May 16th 70.
Ne ¼	29	"	"	160	M. B. L. W. 109897 R. & R. 150, June 24th 67.
Nw ¼	"	"	"	160	M. B. L. W. 109908 R. & R. 4151, June 24th, 70.
Se ¼	"	"	"	160	M. B. L. W. 108931 R. & R. 4152, June 24th 70.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼ ne ¼	31	"	"	40	P. C. 4975, May 24th 70.
N ½ ne ¼—n ½ nw ¼	33	"	"	160	M. B. L. W. 108887 R. & R. 4147, June 24th 70.
S ½ ne ¼—s ½ nw ¼	"	"	"	160	M. B. L. W. 108028 R. & R. 4113, June 2nd 70.
Se ¼	"	"	"	160	A. C. Scrip 1428 N. C. R. & R. 3025, May 16th 70.
Sw ¼	"	"	"	160	M. B. L. W. 109735 R. & R. 4112, June 2nd 70.
Se ¼ ne ¼	35	"	"	40	P. C. 5005, June 4th 70.
Sw ¼ ne ¼—e ½ sw ¼ nw ¼ se ¼	"	"	"	160	M. B. L. W. 109225 R. & R. 4168, June 24th 70.
Nw ¼	"	"	"	160	M. B. L. W. 109975 R. & R. 4169, June 24th 70.
Sw ¼ se ¼	"	"	"	40	P. C. 5015, June 4th 70.
822					
Ne ¼ ne ¼	1	132	34	46.18	P. C. 3490, June 8th 67.
Nw ¼ ne ¼—n ½ nw ¼	"	"	"	133.46	P. C. 5151, Oct. 1st 70.
S ½ ne ¼—s ½ nw ¼	"	"	"	160	M. B. L. W. 109881 R. & R. 4215, Oct. 8th 70.
E ½ sw ¼—sw ¼ sw ¼	"	"	"	120	M. B. L. W. 62520 R. & R. 4214, Oct. 8th 70.
Ne ¼ se ¼—w [—] se ¼	"	"	"	120	M. B. L. W. 110156 R. & R. 4217, Oct. 10th 70.
Ne ¼ and se ¼	5	"	"	328.47	P. C. 5176, Nov. 1st 70.
Ne ¼	13	"	"	160	M. B. L. W. 110300 R. & R. 6268, Dec. 30th 70.
W ½ nw ¼	"	"	"	80	M. B. L. W. 47993 R. & R. 4666, Nov. 20th 68.
E ½ se ¼—nw ¼ se ¼	"	"	"	120	P. C. 5429, May 2nd 71.
Sw ¼ se ¼	"	"	"	40	P. C. 4443, Feb. 20th 69.
W ½ sw ¼	"	"	"	80	P. C. 4398, Nov. 26th 68.
Sw ¼	15	"	"	160	A. C. Scrip 1191 Ohio R. & R. 1057, Nov. 19th, 68.
Se ¼	17	"	"	160	A. C .Scrip 154 Penn. R. & R. 1055. Nov. 19th 66.
Ne ¼	21	"	"	160	A. C. Scrip 239 W. Va. R. & R. 185. Jany. 4th 66.
Nw ¼	"	"	"	160	A. C. Scrip 252 [Va.] Va. R. & R. 183, Jany. 4th 66.
823					
Se ¼	21	132	34	160	A. C. Scrip 254 W. Va. R. & R. 186, Jany. 14th 66.
E ½ sw ¼	"	"	"	80	A. C. Scrip 42 Penn. R. & R. 1056, Nov. 19th 66.
Nw ¼ nw ¼	27	"	"	40	M. B. L. W. 13714 R. & R. 3641, Jany 5th 66.
W ½ se ¼—e ½ sw ¼	"	"	"	160	M. B. L. W. 110583 R. & R. 4270, Dec. 30th 70.
Nw ¼	29	"	"	160	M. B. L. W. 109592 R. & R. 4196, July 15th 70.
Sw ¼	"	"	"	160	A. C. Scrip 5634 N. Y. R. & R. 3045, May 16th 70.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Se ¼	31	"	"	160	M. B. L. W. 109817 R. & R. 4200, July 15th 70.
Nw ¼	33	"	"	160	M. B. L. W. 109735 R. & R. 4147, July 15th 70.
Sw ¼	"	"	"	160	M. B. L. W. 109852 R. & R. 4201, July 15th 70.
W ½ nw ¼	1	133	34	79.60	P. C. 5128, Sept. 21st 70.
E ½ sw ¼—sw ¼ sw ¼	"	"	"	120	P. C. 5147, Sept. 28th 70.
All	3	"	"	628.40	P. C. 5132, Sept. 24th 70.
Se ¼—se ¼ ne ¼	5	"	"	200	P. C. 5149, Sept. 28th 70.
S ½ se ¼—s ½ sw ¼	7	"	"	158.15	P. C. 5129, Sept. 21st 70.
E ½ ne ¼—e ½ se ¼	9	"	"	160	M. B. L. W. 109281 R. & R. 4213, July 20th 70.
E ½ nw ¼—sw ¼ nw ¼	9	133	34	120	P. C. 5137, Sept. 26th 70.
S ½ ne ¼—se ¼	11	"	"	240	P. C. 5148, Sept. 28th 70.
Nw ¼ & sw ¼	"	"	"	320	P. C. 5127, Sept. 21st 70.
W ½ nw ¼—nw ¼ sw ¼	13	"	"	120	P. C. 5116, Oct. 8th 70.
Ne ¼	15	"	"	160	M. B. L. W. 110038 R. & R. 4203, Sept. 14th 70.
Nw ¼	"	"	"	160	M. B. L. W. 110000 R. & R. 4204, Sept. 14th 70.
824					
Se ¼	15	133	34	160	M. B. L. W. 109993 R. & R. 4005, Sept. 14th 70.
N ½ sw ¼ se ¼ sw ¼	"	"	"	120	M. B. L. W. 16676 R. & R. 4206, Sept. 14th 70.
All	17	"	"	640	P. C. 5097, Aug. 24th 70.
Ne ¼ & nw ¼	19	"	"	314.89	P. C. 5108, Sept. 2nd 70.
Sw ¼ & se ¼	"	"	"	315.64	P. C. 5098, Aug. 24th 70.
Nw ¼	21	"	"	160	M. B. L. W. 61840 R. & R. 4207. July 14th 70.
Sw ¼	"	"	"	160	A. C. Scrip 5663 N. Y. R. & R. 3102, Aug. 24th 70.
Nw ¼ nw ¼	23	"	"	40	P. C. 5165, Oct. 8th 70.
Sw ¼ ne ¼	25	"	"	40	P. C. 3652, Aug. 22nd 67.
Se ¼	"	"	"	160	A. C. Scrip 3271 Penn. R. & R. 2399, Apr. 30th 67.
All	29	"	"	640	P. C. 5098, Aug. 24th 70.
All	31	"	"	636.51	A. C. 5162, Oct. 7th 70.
Ne ¼ nw ¼	33	"	"	320	P. C. 5151, Sept. 28th 70.
Sw ¼ & se ¼	"	"	"	320	P. C. 5175, Nov. 1st 70.
Nw ¼	35	"	"	160	M. B. L. W. 110223 R. & R. 4216, Oct. 10th 70.
E ½ sw	"	"	"	80	P. C. 5158, Oct. 1st 70.
W ½ sw ¼	25	134	34	80	P. C. 4518, May 15th 69.
Ne ½ ne ¼	35	"	"	40	P. C. 4519, May 15th 69.
Se ¼ nw ¼—ne ¼ sw ¼	"	"	"	80	P. C. 4520, May 15th 69.
Se ¼ ne ¼— w ½ ne ¼ e ½ nw ¼	3	135	34	206.92	P. C. 4523, May 15th 69.
Nw ¼ se ¼	"	"	"	40	P. C. 4527. May 15th 69.
Ne ¼	11	"	"	160	A. C. Scrip 555 N. H. R. & R. 1499. Mch. 9th 67.
Se ¼ se ¼	"	"	"	40	M. B. L. W. 1088 R. & R. 15, Feb. 21st 67.

825

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N. W.			
Nw ¼ nw ¼	13	135	34	40	M. B. L. W. 1088 R. & R. 15, Feb. 21st 67.
Se ¼ se ¼	"	"	"	40	P. C. 4522, May 15th 69.
W ½ sw [—]	15	"	"	80	P. C. 4528, May 15th 69.
Nw ¼ se ¼	17	"	"	40	P. C. 4533, May 15th 69.
Se ¼ se ¼	"	"	"	40	P. C. 4532, May 15th 69.
Sw ¼ se ¼	"	"	"	40	P. C. 4534, May 15th 69.
N ½ nw ¼	21	"	"	80	P. C. 4530, May 15th 69.
Ne ¼ ne ¼	"	"	"	40	P. C. 4529, May 15th 69.
Ne ¼	1	131	35	160.76	M. B. L. W. 98394 R. & R. 4136, June 4th 70.
W ½ se ¼—e ½ sw ¼	"	"	"	160	M. B. L. W. 108857 R. & R. 4191, June 24th 70.
Nw ¼	3	"	"	159.43	M. B. L. W. 97952 R. & R. 4187, June 24th 70.
Ne ¼	5	"	"	163.11	A. D. Scrip 5648 N. Y. R. & R. 3077, June 4th 70.
Nw ¼	"	"	"	164.51	M. B. L. W. 109577 R. & R. 4202, July 15th 70.
Se ¼	"	"	"	160	M. B. L. W. 109817 R. & R. 4133, June 4th 70.
Ne ¼	11	"	"	160	M. B. L. W. 98464 R. & R. 4184, June 24th 70.
Nw ¼	"	"	"	160	M. B. L. W. 97954 R. & R. 4182, June 24th 70.

826

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N. W.			
Se ¼	11	131	35	160	M. B. L. W. 97953 R. & R. 4183, June 24th 70.
Ne ¼	13	"	"	160	M. B. L. W. 98392 R. & R. 4188, June 24th 70.
Nw ¼	"	"	"	160	M. B. L. W. 97963 R. & R. 4185, June 24th 70.
Se ¼	"	"	"	160	A. C. Scrip 5627 N. Y. R. & R. 3041, May 16th 70.
Sw ¼	"	"	"	160	A. C. Scrip 5624 N. Y. R. & R. 3036, May 16th 70.
Sw ¼ ne ¼—lot 2 se ¼	19	"	"	234	School selection Aug. 26th 70. Appd. Sept. 23rd 74.
Ne ¼	21	"	"	160	A. C. Scrip 5616 N. Y. R. & R. 3038, May 16th 70.
Nw ¼	"	"	"	160	A. C. Scrip 5615 N. Y. R. & R. 3039, May 16th 70.
Nw ¼ se ¼—ne ¼ sw ¼ w ½ sw ¼	"	"	"	160	M. B. L. W. 109589 R. & R. 4125, June 4th 70.
Nw ¼ ne ¼	23	"	"	40	P. C. 5012, June 4th 70.
Sw ¼ ne ¼	"	"	"	40	P. C. 5013, June 4th 70.
Nw ¼	"	"	"	160	M. B. L. W. 10915 R. & R. 4193, June 24th 70.
W ½ se ¼ e ½ sw ¼	"	"	"	160	M. B. L. W. 108179 R. & R. 4126, June 4th 70.
N ½ nw ¼	25	"	"	80	P. C. 5444, May 27th 71.
Ne ¼ ne ¼	27	"	"	40	M. B. L. W. 97959 R. & R. 4178, June 24th 70.
Nw ¼ ne ¼—e ½ nw ¼ sw ¼ nw ¼	"	"	"	160	M. B. L. W. 97939 R. & R. 4192, June 24th 70.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Sw ¼	"	"	"	160	A. C. Scrip 5626 N. Y. R. & R. 3042, May 16th 70.
Ne ¼	35	"	"	160	M. B. L. W. 109690 R. & R. 4127, June 4th 70.
Nw ¼	"	"	"	160	M. B. L. W. 97905 R. & R. 4180, June 24th 70.
827					
Sw ¼	35	131	35	160	M. B. L. W. 97962 R. & R. 4181, June 24th 70.
Nw ¼ nw ¼—s ½ nw ¼ sw ¼ & se ¼	1	132	35	447.90	School selection Aug. 16th 74 Appd. Sept. 23rd 74.
Se ¼	13	"	"	160	M. B. L. W. 110547 R. & R. 4260, Dec. 14th 70.
Sw ¼	"	"	"	160	M. B. L. W. 25906 R. & R. 4254, Dec. 14th 70.
S ½ sw ¼	19	"	"	76.50	School selection Aug. 20th 74 Appd. Sept. 23rd 74.
Nw ¼ & sw ¼	21	"	"	320	School selection Aug. 26th 74 Appd. Sept. 23rd 74.
W ½ sw ¼	23	"	"	80	M. B. L. W. 109774 R. & R. 4142. June 11th 70.
Se ¼	25	"	"	160	A. C. Scrip 5673 N. Y., R. & R. 3063, June 2nd 70.
Ne ¼	27	"	"	160	A. C. Scrip N. Y. R. & R. 3066, June 2nd 70.
Se ¼	"	"	"	160	A. C. Scrip 5669 N. Y. R. & R. 3068, June 2nd 70.
Ne ¼	29	"	"	160	A. C. Scrip 5681 N. Y. R. & R. 3066, June 2nd 70.
Sw ¼	"	"	"	160	M. B. L. W. 112416 R. & R. 4352 May 25th 71.
Ne ¼	31	"	"	160	M. B. L. W. 110351 R. & R. 4350, May 10th 71.
Se ¼	"	"	"	160	A. C. Scrip 5672 N. Y. R. & R. 3064, June 2nd 70.
W ½ ne ¼— w ½ se ¼	33	"	"	160	M. B. L. W. 9885 R. & R. 25. June 11th 70.
Nw ¼	"	"	"	160	A. C. Scrip 5641 N. Y. R. & R. 3071, June 2nd 70.
Sw ¼	"	"	"	160	A. C. Scrip 5665 N. Y. R. & R. 3074, June 2nd 70.
828					
W ½ nw ¼	35	132	35	80	M. B. L. W. 109677 R. & R. 4141, June 11th 70.
Se ¼	9	133	35	160	M. B. L. W. 110290 R. & R. 4222, Oct. 24th 70.
Sw ¼	"	"	"	160	M. B. L. W. 110082 R. & R. 4223, Oct. 24th 70.
All	13	"	"	640	P. C. 5143, Sept. 28th 70.
Ne ¼ & nw ¼	17	"	"	320	P. C. 5140, Sept. 28th 70.
Sw ¼ & se ¼	"	"	"	320	P. C. 5155, Sept. 28th 70.
Ne ¼ se ¼	21	"	"	320	P. C. 5141, Sept. 28th 70
Ne ¼ & se ¼ se ¼ nw ¼	23	"	"	360	P. C. 5162, Oct. 7th 70.
Se ¼ ne ¼	23	135	35	40	S. H. B. Scrip 596 R. R. & R. 85, Sept. 9th 71.
Nw ¼	"	"	"	160	S. H. B. Scrip 294 E. R. & R. 482, Sept. 8th 71.

6th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Nw ¼ se ¼	"	"	"	40	O. H. R. Scrip [illegible], Sept. [illegible] 75. Cancelled [illegible] [illegible] 76.
Sw ¼ sw ¼	25	120	25	40	P. C. [illegible], Aug. 1st 69.
Ne ¼ se ¼	27	"	"	40	P. C. [illegible], May [illegible] 69.
Sw ¼ nw ¼—nw ¼ sw ¼	"	"	"	80	P. C. [illegible], May [illegible] 69.
Nw ¼ se ¼—s ½ nw ¼	29	"	"	120	P. C. [illegible], Apr. [illegible] 70.
E ½ sw ¼	"	"	"	80	P. C. [illegible], Apr. [illegible] 70.
Ne ¼	31	"	"	160	A. C. Scrip [illegible] R. & D. [illegible], July [illegible], 68.
E ½ nw ¼	"	"	"	80	M. B. L. W. [illegible] R. & D. [illegible], July [illegible] 68.
Se ¼	"	"	"	160	A. C. Scrip [illegible] R. & D. [illegible], July [illegible] 68.
Se ¼ sw ¼	"	"	"	40	P. C. [illegible], Apr. [illegible] 70.
W ½ sw ¼	33	"	"	80	P. C. [illegible], Aug. [illegible] 69.
E ½ sw ¼—w ½ se ¼	19	121	27	160	[illegible], July [illegible] 73 & July [illegible] 73, [illegible], Apr. [illegible], P. C. [illegible], Sept. [illegible]

829

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
S ½ se ¼—e ½ sw ¼	27	120	27	160	[illegible], May [illegible], 73 & July [illegible], 73. [illegible], Sept. [illegible], 73. P. C. [illegible], Feb. [illegible]
Sw ¼ se ¼	"	"	"	40	[illegible], May [illegible], 73 & June 1st 73. [illegible], Apr. [illegible], 73, P. C. [illegible], May [illegible], 69.
E ½ se ¼	1	124	27	79.80	P. C. [illegible], Aug. [illegible], 70.
Sw ¼ & se ¼	11	"	"	320	State selection, Sept. [illegible], 67. Apprd. May 4, 68.
Se ¼	19	"	"	160	A. C. Scrip [illegible] R. & D. [illegible], Sept. [illegible], 68.
S ½ se ¼—e ½ sw ¼	27	"	"	160	[illegible], May [illegible], 73. P. C. [illegible], Aug. [illegible], 73.
Sw ¼ & se ¼	"	"	"	320	State selection, Sept. [illegible], 67. Apprd. May [illegible], 68.
Sw ¼	33	"	"	160	A. C. Scrip [illegible] R. & D. [illegible], Sept. [illegible], 68.
Se ¼	35	"	"	160	A. C. Scrip [illegible] R. & D. [illegible], Sept. [illegible], 68.
N ½ nw ¼—se ¼ nw ¼	5	125	27	120.[illegible]	A. C. Scrip [illegible] R. & D. [illegible], Oct. [illegible], 67.
Ne ¼	11	"	"	160	A. C. Scrip [illegible] R. & D. [illegible], Sept. [illegible], 67.
Ne ¼	25	"	"	160	A. C. Scrip [illegible] R. & D. [illegible], Apr. [illegible], 67.
Nw ¼	"	"	"	160	A. C. Scrip [illegible] R. & D. [illegible], June [illegible], 67.
Ne ¼ se ¼	"	"	"	40	P. C. [illegible], June [illegible], 67.
Nw ¼ sw ¼	"	"	"	40	P. C. [illegible], June [illegible], 67.
Sw ¼ se ¼	7	126	27	40	P. C. [illegible], Sept. [illegible], 67.

830

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Se ¼	7	136	37	160	A. C. Scrip 1640 Mass. R. & R. 2088, June 17th, 67.
Sw ¼	"	"	"	190.80	A. C. Scrip 275 N. H. R. & R. 1511, Mch. 18th, 67.
Se ¼	15	"	"	160	A. C. Scrip 3397 Ohio R. & R. 1237, Dec. 24th, 66.
Nw ¼	17	"	"	160	A. C. Scrip 4177 Penn. R. & R. 2407, Sept. 3rd, 67.
Se ¼	"	"	"	160	A. C. Scrip 205 N. H. R. & R. 1516, Mch. 18th, 67.
Sw ¼	"	"	"	160	A. C. Scrip, 206 N. H. R. & R. 1517, Mch. 18th, 67.
Ne ¼	21	"	"	160	A. C. Scrip 258 N. H. R. & R. 1563, Apr. 13th, 67.
Ne ¼	29	"	"	160	A. C. Scrip 286 Ills. R. & R. 2542, Oct. 4th, 67.
Se ¼ se ¼	"	"	"	40	P. C. 486, Mch. 3rd, 70.
W ½ ne ¼	33	"	"	80	M. B. L. W. 19849 R. & R. 68, Apr. 20th, 70.
Se ¼ ne ¼	"	"	"	40	P. C. 3359, Apr. 15th, 67.
Nw ¼	"	"	"	160	M. B. L. W. 11366 R. & R. 69, Apr. 20th, 70.
N ½ se ¼	"	"	"	80	P. C. 485, Mch. 3rd, 70.
Sw ¼	"	"	"	160	A. C. Scrip 313 Ills. R. & R. 2555, Oct. 4th, 67.
Ne ¼	19	133	38	160	A. C. Scrip 1010 Tenn. R. & R. 644, Sept. 24th, 68.
Se ¼	"	"	"	160	A. C. Scrip 1013 Tenn. R. & R. 2961, Sept. 24th, 68.
E ½ se ¼	29	"	"	80	A. C. Scrip 1014 Tenn. R. & R. 646, Sept. 24th, 68.
Ne ¼ se ¼	33	"	"	40	A. C. Scrip 650 Tenn. R. & R. 2966, Sept. 24th, 68.
Sw ¼	35	"	"	160	A. C. Scrip 639 Tenn. R. & R. 2955, Sept. 24th, 68.
Ne ¼	7	134	38	160	A. C. Scrip 991 Mass. R. & R. 2954, Sept. 24th, 68.

831

Ne ¼ nw ¼	7	134	38	40	P. C. 828, June 21st, 70.
Nw ¼ nw ¼	"	"	"	34.36	P. C. 750, May 23rd, 70.
Sw ¼ nw ¼	"	"	"	34.68	P. C. 791, June 9th, 70.
Se ¼	"	"	"	160	A. C. Scrip 1111 Mass. R. & R. 2953, Sept. 24th, 68.
E ½ sw ¼—nw ¼ sw ¼ se ¼ nw ¼	"	"	"	155	P. C. 817, June 20th, 70.
Sw ¼ sw ¼	"	"	"	35.31	P. C. 789, June 9th, 70.
Sw ¼	9	"	"	160	A. C. Scrip 634 Tenn. R. & R. 2944, Sept. 24th, 68.
N ½ ne ¼—se ¼ ne ¼ lots 1 & 2	17	"	"	204.55	M. B. L. W. 47269 R. & R. 4032, Sept. 24th, 68.
N ½ nw ¼—sw ¼ nw ¼ lots 3 & 4	"	"	"	188.10	M. B. L. W. 69299 R. & R. 4031, Sept. 24th, 68.
Lot 5	"	"	"	11.89	Hd. 5501, Sept. 2nd, 68. Canceld Aug. 19th, 76.
Nw ¼ ne ¼—lot 4	19	"	"	63	P. C. 5500, Sept. 2nd, 68. Canceled Aug. 19th, 76. P. C. 2921, Mch. 11th, 84.

		5th Mer.			
PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
S ½ nw ¼—lots 1 & 2	"	"	"	142.74	P. C. 5499, Sept. 2nd, 68. Canceled Aug. 19th, 76. Hd. 8156, Mch. 24th, 84. F. C. 7449, Feb. 18th, 91.
Sw ¼ sw ¼—se ¼ sw ¼ lot 3	21	"	"	119.90	Hd. 1597, Sept. 22nd, 68. Canceled Mch. 1st, 84. Hd. 8397, May 22nd, 85. F. C. 7729, Dec. 21st, 91.
Lot 4	25	"	"	30.50	School selection Dec. 22nd. 71. Appd. Jany. 15th, 76.
Sw ¼ & se ¼	"	"	"	320	State selection Sept. 17th, 67. Appd. May 8th, 69.
Ne ¼ & se ¼	27	"	"	320	State selection Sept. 17th, 67. Appd. May 8th, 69.
832					
Nw ¼	27	134	38	160	A. C. Scrip 635 Tenn. R. & R. 2945, Sept. 24th, 68.
Ne ¼ & se ¼	29	"	"	320	State selection, Sept. 17th, 67. Appd. Nov. 8th, 69.
Sw ¼ & se ¼	33	"	"	320	State selection, Sept. 17th, 67. Appd. May 8th, 69.
Ne ¼	3	135	38	156	A. C. Scrip 3440 Penn. R. & R. 2478, Sept. 30th, 67.
Nw ¼	"	"	"	155.20	A. C. Scrip 3441 Penn. R. & R. 2483, Sept. 30th, 67.
Se ¼	"	"	"	160	M. B. L. W. 10644 R. & R. 3991, May 23rd, 68.
Sw ¼	"	"	"	160	A. S. Scrip 1065 Ills. R. & R. 2183, July 22nd, 67.
Nw ¼	5	"	"	159.05	A. C. Scrip 1124 Mass. R. & R. 2857, Apr. 28th, 68.
Se ¼	"	"	"	160	A. C. Scrip 1116 Maine R. & R 2874, June 1st, 68.
Sw ¼	"	"	"	160	A. C. Scrip 1120 Mass. R. & R. 2853, Apr. 2nd, 68.
Ne ¼	7	"	"	160	A. C. Scrip 729 Ohio R. & R. 1501, Mch. 13th, 67.
W ½ nw ¼ nw ¼ sw ¼	"	"	"	73.70	Hd. 728, June 7th, 70. C. C. 1117, Dec. 7th, 70.
Ne ¼ se ¼	"	"	"	40	P. C. 938, July 26th, 70.
E ½ sw ¼— sw ¼ sw ¼	"	"	"	104.51	Hd. 3263, Nov. 26th, 66. F. C. 286, Feb. 12th 73.
S ½ se ¼—ne ¼ se ¼	"	"	"	120	Hd. 842, July 28th, 70. F. C. 2004, May 15th, 77.
S ½ sw ¼	"	"	"	80	P. C. 700, May 10th, 70.
Sw ¼ sw ¼	11	"	"	40	P. C. 759, May 31st, 70.
N ½ nw ¼	15	"	"	80	P. C. 758, May 31st, 70.
Nw ¼ ne ¼	17	"	"	40	P. C. 4387, Dec. 14th, 68.
Ne ¼ nw ¼	"	"	"	40	P. C. 3741, Oct. 28th, 67.
833					
Lots 1 & 2	17	135	38	93.45	A. C. Scrip 2014 Ind. R. & R. 2026 June 17th, 67.
E ½ se ¼—nw ¼ se ¼ lot 3	"	"	"	159.75	A. C. Scrip 2319 Ind. R. & R. 2159 July 15th, 67.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Nw ¼ nw ¼	21	"	"	40	M. B. L. W. 93951 R. & R. 3943, Nov. 23rd 67.
W ½ ne ¼	31	"	"	80	P. C. 959 July 30th, 70.
Lots 1 & 2 se ¼ nw ¼ sw ¼ nw ¼	"	"	"	136.21	P. C. 915 July 21st, 70.
Sw ¼	"	"	"	148.80	P. C. 944 July 26th, 70.
Ne ¼ n ½ se ¼ se ¼ se ¼	33	"	"	280	State selection Sept. 17th 67 Appd. May 8th, 69.
Sw ¼ nw ¼	1	136	"	40	P. C. 495 Mch. 7th, 70.
Sw ¼ sw ¼	"	"	"	40	P. C. 462 Jany. 28th, 70.
Se ¼	3	"	"	160	A. C. Scrip 229 N. H. R. & R. 1954 June 8th, 67.
Sw ¼	"	"	"	160	A. C. Scrip 228 N. H. R. & R. 1958 June 8th, 67.
Sw ¼ nw ¼—lot 2	7	"	"	66.09	P. C. 4332 Nov. 4th, 68.
S ½ sw ¼—nw ¼ sw ¼ lots 3 & 4	"	"	"	211.66	M. B. L. W. 107156 R. & R. 4044 Sept. 24th, 68.
lot					
Ne ¼ nw ¼	11	"	"	40	P. C. 246 Sept. 29th 69.
Nw ¼ nw ¼	"	"	"	40	P. C. 482 Mch. 2nd, 70.
Sw ¼ nw ¼	"	"	"	40	P. C. 472 Feb. 12th, 70.
N ½ ne ¼	13	"	"	80	P. C. 748 May 23rd, 70.
S ½ nw ¼	"	"	"	80	P. C. 36 Mch. 12th, 69.
Lot 1	17	"	"	28.72	P. C. 4347 Nov. 11th, 68.
Lot 3	"	"	"	34.22	P. C. 3984 Apr. 27th, 68.
Lot 2--w ½ sw ¼ se ¼ sw ¼	"	"	"	154.72	A. C. Scrip 1112 Mass. R. & R. 2859 Apr. 28th, 69.
All	21	"	"	571.63	School selection Apr. 2nd, 70. Appd. Jany. 15th, 76.

834

		N.	W.		
Ne ¼ ne ¼	23	136	38	40	P. C. 9 Feb. 1st, 69.
Sw ¼ sw ¼	"	"	"	40	P. C. 467 Feb. 4th, 70.
Sw ¼	25	"	"	160	A. C. Scrip 217 N. H. R. & R. 1957 June 8th, 67.
Ne ¼ & se ¼	27	"	"	320	State selection Sept. 17th, 67 Appd. May 8th, 69.
Sw ¼	29	"	"	160	Hd. 99 Apr. 28th, 69 F. C. 1035 Sept. 25th, 75.
N ½ ne ¼—n ½ nw ¼	31	"	"	151.38	Hd. 132 May 10th, 69. A. C. Scrip 1448 Ala. R. & R. 505 Nov. 26th, 72.
N ½ se ¼—n ½ sw ¼	"	"	"	152.25	Hd. 3365 Dec. 19th, 66. F. C. 121 July 2nd, 72.
S ½ ne ¼—s ½ sw ¼	"	"	"	152.69	Hd. 131 May 10th, 69 F. C. 989 July 6th, 75.
S ½ ne ¼—s ½ nw ¼	"	"	"	151.82	Hd. 891 Sept. 14th, 70. Canceled by F. Apr. 7th, 73, Reinstated by F. July 15th, 79 F. C. 1034 Sept. 15th 75.
W ½ ne ¼—e ½ nw ¼ e ½ sw ¼ nw ¼ se ¼ lot 2	33	"	"	316.55	State selection Sept. 17th 67, Appd. May 8th, 69.
Ne ¼ ne ¼	35	"	"	40	P. C. 3500 June 8th, 67.

		5th Mer.			
PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
W ½ se ¼	7	137	38	80	S. H. B. Scrip 208 C. R. & R. 13 July 13th, 70.
Se ¼ se ¼	"	"	"	40	S. H. B. Scrip 29 R. & R. 12 July 13th, 70.
Nw ¼ sw ¼	"	"	"	56.36	S. H. B. Scrip 545 B. R. & R. 7 July 13th, 70.
Sw ¼ sw ¼	"	"	"	56.60	S. H. B. Scrip 429 B. R. & R. 6 July 13th, 70
E ¼ ne ¼	"	"	"	80	S. H. B. Scrip 482 C. R. & R. 9 July 13th, 70.
Nw ¼	15	"	"	160	S. H. B. Scrip 134 E. R. & R. 2 June 7th, 70.
835					
S ½ sw ¼	15	137	38	80	S. H. B. Script 160 R. & R. 2 Aug. 3rd, 72. Canceled June 13th, 76. P. C. 481 Aug. 12th 76. See Commr. letter June 13th, 76.
Se ¼ se ¼—w ½ se ¼	17	"	"	120	S. H. B. Scrip 18 E. R. & R. July 13th, 70.
S ½ nw ¼ n ½ sw ¼	"	"	"	160	S. H. B. Scrip 189 D. R. & R. 10 July 13th, 70. Canceled by C. Sept. 23rd, 76.
Nw ¼ ne ¼	29	138	38	40	S. H. B. Scrip 237 R. & R. 19 Jany. 6th 72.
Lots 1, 2, 3, 4, 7, 8, 9, & ne ¼ nw ¼	19	141	38	332.67	White Earth Ind. Res. Apr. 18/67.
Nw ¼ & sw ¼ & s ½ se ¼	29	"	"	400	White Earth Ind. Res. Apr. 18th, 67.
All	31	"	"	656.48	White Earth Ind. Res. Apr. 18th, 67.
Lots 1, 5, 6, 7 w ½ nw ¼ & sw ¼	33	"	"	351.15	White Earth Ind. Res. Apr. 18th, 67.
Ne ¼ & nw ¼	1	133	39	320.61	State selection Sept. 17th, 67. Appd. May 8th, 69.
Ne ¼ & se ¼	11	"	"	320	State selection Sept. 17th, 67. Appd. May 8th, 69.
Nw ¼	"	"	"	160	A. C. Scrip 2925 Penn. R. & R. 2799 Nov. 20th, 67.
Ne ¼ & nw ¼	13	"	"	320	State selection Sept. 17th, 67. Appd. May 8th, 69.
Sw ¼	"	"	"	160	A. C. Scrip 2931 Penn. R. & R. 2805 Nov. 20th, 67.
Lots 1, 2, 3,—nw ¼ se ¼	1	134	39	158.45	M. B. L. W. 102453 R. &. R. 3727 June 23rd, 67.
Lot 4.	"	"	"	27.25	P. C. 263 Oct. 8th, 69.
S ½ se ¼—ne ¼ se ¼	"	"	"	120	P. C. 756 May 31st, 70.
Se ¼ sw ¼	"	"	"	40	P. C. 740 May 21st 70.
Ne ¼	3	"	"	158.76	A. C. Scrip 19 Maine R. & R. 227 Apr. 26th, 66.

836

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Lot 1	3	134	39	30.20	P. C. 623 Apr. 16th, 70.
Se ¼ nw ¼—nw ¼ sw ¼ lots 2 & 3	"	"	"	141.50	Hd. 1502 June 13th, 65, Canceled July 15th, 70. Hd. 839 July 26th, 70, Canceled Sept. 14th 78. Hd. 8063 Nov. 2nd, 83, F. C. 5031 Nov. 2nd 85.
Se ¼	"	"	"	160	A. C. Scrip 18 Maine R. & R. 218 Apr. 26th, 66.
Se ¼ sw ¼ & lot 4	"	"	"	79.30	M. B. L. W. 141438 R. & R. 6 July 14th, 60
Ne ¼ sw ¼	"	"	"	40	P. C. 622 Apr. 16th, 70.
Lot 1—se ¼ ne ¼	5	"	"	62.81	M. B. L. W. 74860 R. & R. 2780 Nov. 9th, 67.
Lots 2, 3, 4, 5, sw ¼ ne ¼—e ½ se ¼	"	"	"	299.86	P C. 696 May 10th, 70.
Lots 1, 2, 3, 4	7	"	"	136.52	A. C. Scrip 1186 Penn. R. & R. 822 [—] 19th 66.
N ½ nw ¼ & lots 5 & 6	"	"	"	156.80	M. B. L. W. 103392 R. & R. Oct. 19th, 66.
Lot 1	"	"	"	156.80	M. B. L. W. 103392 R. & R. 3805 Oct. 19th, 66.
Lot 1	9	"	"	40	P. C. 477 Feb. 18th, 70.
Lots 1 & 2	11	"	"	67.75	P. C. 680 May 7th, 70.
Lot 3	"	"	"	51.20	P. C. 3697 Oct. 5th, 67.
Lot 4	"	"	"	31.80	P. C. 679 May 7th, 70.
Lot 5	"	"	"	31.50	M. B. L. W. 105287 R. & R. 3832 Jany. 8th, 67.
Ne ¼ se ¼	"	"	"	40	P. C. 3838 Dec. 10th, 67.
Lots 6 & 7	13	"	"	57.35	Hd. 5413 Aug. 10th 68, Canceled Aug. 19th, 76, P. C. 2923 Mch. 1st, 84, See letter "F" Apr. 6th 85.
837					
Lots 4, 5, 8, 9	13	134	39	157.15	Hd. 5482 Aug. 31st. 68, Canceled Aug. 19th, 76, P. C. 2922 Mch. 11th, 84, See letter "F" Apr. 6th, 95.
Lot 2	15	"	"	34.30	P. C. 77 May 12th, 70.
Lots 3 & 4	"	"	"	68.85	Hd. 653 May 6th, 70, C. C. 1276 May 20th, 71.
Se ¼ se ¼	"	"	"	40	Hd. 4547 Dec. 7th, 67 F. C. 438 Oct. 8th, 73.
Lot 2	21	"	"	27.20	P. C. 4183 Aug. 15th, 68.
Lot 1—e ½ se ¼ sw ¼ se ¼	"	"	"	155.42	Hd. 3931 June 25th, 67, F. C. 411 Sept. 16th, 73.
Ne ¼ ne ¼	23	"	"	40	P. C. 741 May 21st, 70.
Nw ¼ ne ¼— n ½ nw ¼ sw ¼ nw ¼	"	"	"	160	Hd. 1910 Oct. 31st, 65, F. C. 217 Oct. 30th, 72.
Se ¼ se ¼	"	"	"	40	P. C. 840 June 24th, 70.
Nw ¼ sw ¼	"	"	"	40	P. C. 799 June 11th, 70.
S ½ sw ¼—ne ¼ sw ¼	23	"	"	120	P. C. 839 June 24th, 70.
Lot 1	25	"	"	23.05	School selection Apr. 2nd, 70, Appd. Jany. 15th, 76.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
N ½ ne ¼—sw ¼ ne ¼ Lot 1	27	“	“	160	P. C. 798 June 11th, 70.
Lots 2, 5, 6	“	“	“	101.35	A. C. Scrip 1103 Mass. R. & R. 2822 Dec. 6th, 67.
Lots 3 & 4—w ½ sw ¼	“	“	“	153.56	A. C. Scrip 1192 Ills. R. & R. 2721 Oct. 15th, 67.
Se ¼ ne ¼—lots 1—2 North part of lot 2	29	“	“	99.70	Hd. May 11th, 70, F. C. 938 June 8th, 75.
E ½ se ¼	“	“	“	80	A. C. Scrip 1191 Ills. R & R. 2720 Oct. 15th, 67.
Lot 1	33	“	“	22.32	P. C. 3825 Dec. 6th, 67.
Se ¼	“	“	“	160	A. C. Scrip 921 Mass. R & R. 2737 Oct. 19th, 67.
Lots 1 & 2	35	“	“	92.22	P. C. 3774 Nov. 13th, 67.
838					
Nw ¼ & sw ¼	1	135	39	318.80	State selection Sept. 17th, 67, Appd. May 18th, 69.
Ne ¼	3	“	“	158.19	A. C. Scrip 1123 Mass. R. & R. 2848 Apr. 2nd, 68.
Nw ¼	“	“	“	158.19	A. C. Scrip 2332 Ind. R. & R. 2233 July 24th, 67.
N ½ sw ¼—n ½ se ¼	“	“	“	160	Hd. 700 May 30th, 70, F. C. 1534 June 27th, 76.
Ne ¼ nw ¼—nw ¼ ne ¼ sw ¼ ne ¼—lot 2	25	“	“	155.56	Hd. 518 Dec. 10th, 69, F. C. 1533 June 27th, 76.
Lot 3	“	“	“	31.85	P. C. 526 Mch. 9th, 70.
Lot 1	“	“	“	49.10	Hd. 187 May 29th, 69, F. C. 855 Mch. 20th, 75.
Lot 1	7	“	“	36.81	P. C. 530 Mch. 16th, 70.
Lots 2, 3, 4, nw ¼ sw ¼	“	“	“	200.20	P. C. 693 May 10th, 70.
S ½ se ¼	“	“	“	80	P. C. 40 Mch. 20th, 69.
Ne ¼	9	“	“	160	A. C. Scrip 2065 Ind. R. & R. 1984 June 11th, 67.
Nw ¼	“	“	“	160	A. C. Scrip 656 Ills. R. & R. 2190 July 22nd, 67.
Lot 1	“	“	“	30.20	P. C. 3513 1/2 June 11th, 67.
Ne ¼	11	“	“	160	A. C. Scrip 2325 Ind. R. & R. 2265 July 29th, 67.
Nw ¼	“	“	“	160	Hd. 4109 July 27th, 67, F. C. 620 Mch. 25th, 74.
Se ¼	“	“	“	160	Hd. 3730 May 4th, 67, F. C. 124 July 3rd, 72.
Sw ¼	“	“	“	160	Hd. 3935 June 25th, 67, F. C. 198 Oct. 8th, 72.
N ½ ne ¼—lots 1 & 2	13	“	“	169.93	Hd. 3252 Nov. 26th, 66, F. C. 95 Mch. 16th, 72.
N ½ nw ¼—lots 3 & 4	“	“	“	186.66	Hd. 3172 Nov. 3rd, 66, F. C. 285 Feb. 12th, 73.
E ½ ne ¼—sw ¼ ne ¼ lot 3	15	“	“	158.80	Hd. 3934 June 25th, 67, F. C. 183, Oct 1st, 72.

839

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		5th Mer.			
		N.	W.		
Lots 1 & 2—s ½ nw ¼	15	135	39	135.88	A. C. Scrip 3395 Penn. R. & R. 2266 July 29th, 67.
Se ¼	"	"	"	160	A. C. Scrip 728 Ohio R. & R. 1502 Mch. 13th, 67.
Sw ¼	"	"	"	160	A. C. Scrip 2022 Ind. R. & R. 2063 June 25th, 67.
Ne ¼	17	"	"	160	A. C. Scrip 3397 Penn. R. & R. 2264 July 29th, 67.
Nw ¼	"	"	"	160	A. C. Scrip 2320 Ind. R. & R. 2264 1/2 July 29th, 67.
Sw ¼ & se ¼	"	"	"	320	State selection Sept. 17th, 67 Appd. May 8th, 69.
Ne ¼ & nw ¼	19	"	"	318.51	State selection Sept. 17th, 67. Appd. May 8th, 69.
Ne ¼ ne ¼	21	"	"	40	P. C. 943 July 26th, 70.
Nw ¼ nw ¼	"	"	"	40	P. C. 85 May 6th, 69.
Sw ¼ nw ¼	"	"	"	40	P. C. 531 Mch. 17th, 70.
W ½ nw ¼—lots 1 & 2	23	"	"	163.17	Hd. 208 June 4th, 69, F. C. 857 Mch. 20th, 75.
Lots 3 & 4	"	"	"	78.79	Hd. 3254 Nov. 26th, 66, F. C. 368 June 25th, 73.
Lot 4	27	"	"	39.96	P. C. 3545 June 25th, 67.
Lot 5	"	"	"	40.16	P. C. 785 June 6th, 70.
Lot 3	"	"	"	20	P. C. 4369 Nov. 28th, 68.
Lot 7	"	"	"	9.50	P. C. 4103 June 8th, 68.
Lot 6	"	"	"	20.18	P. C. 757 May 31st, 70.
Lot 10	"	"	"	1.62	P. C. 786 June 6th, 70.
Lots 4 & 5— sw ¼ s ½ se ¼	29	"	"	339.60	P. C. 694 May 10th, 70.
All	31	"	"	555.14	P. C. 720 May 16th, 70.
Nw ¼ & nw ¼ ne ¼ lots 1, 2, 3,	33	"	"	316.30	P. C. 683 May 10th, 70.
Ne ¼—se ¼ nw ¼ nw ¼ se ¼—lots 1 & 2	35	"	"	308.57	School selection Apr. 2nd, 70. Appd. Jany. 15th, 76.
840					
Sw ¼ nw ¼	35	135	39	40	P. C. 3819, May 27th, 67, Canceled Feb. 17th, 74, Hd. 8333, Jany. 9th, 85, F. C. 7583, July 13th, 91.
Ne ¼ sw ¼ & lot 3	"	"	"	79.95	P. C. 749, May 23rd, 70.
W ½ sw ¼	"	"	"	80	P. C. 656, Apr. 23rd, 70.
S ½ sw ¼—lots 3 & 4	1	136	39	160.64	M. B. L. W. 91960 R. & R. 4045 Sept. 24th, 68.
Lot 1	"	"	"	28.64	P. C. 613, Apr. 13th, 70.
Lot 4	"	"	"	54.52	P. C. 614, Apr. 13th, 70.
Lot 5	"	"	"	48.32	P. C. 661, Apr. 26th, 70.
S ½ se ¼—lots 2 & 3	"	"	"	160.78	Hd. 351, Aug. 6th, 69, F. C. 1537, June 27th, 76.
S ½ sw ¼	"	"	"	80	P. C. 177, Aug. 6th, 69.
N ½ ne ¼—ne ¼ nw ¼	5	"	"	118.04	P. C. 1023, Sept. 9th, 70.
S ½ ne ¼—s ½ nw ¼	"	"	"	160	Hd. 817, July 2nd, 70, F. C. 2084, July 3rd, 77.
Se ¼	"	"	"	160	P. C. 980, Aug. 5th, 70.
N ½ sw ¼	"	"	"	80	Hd. 919, July 13th, 70, F. C. 1523, June 24th, 76.
S ½ sw ¼	"	"	"	80	Hd. 863, Aug. 9th, 70, F. C. 1522, June 24th, 76.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N. W.			
Ne ¼	9	"	"	160	Hd. 643, Apr. 26th, 70, F. C. 982, July 1st, 75.
Nw ¼	"	"	"	160	P. C. 859, June 29th, 70.
Sw ¼ & se ¼	"	"	"	320	P. C. 858, June 29th, 70.
Ne ¼ se ¼	11	"	"	320	State selection Sept. 17th, 67. Appd. May 8th, 69.
Nw ¼	"	"	"	160	Hd. 165, May 22nd, 69, F. C. 984, July 1st, 75.
Sw ¼	"	"	"	160	Hd. 166, May 22nd, 69, F. C. 1640, Sept. 23rd, 76.
841					
Ne ¼ & nw ¼	13	136	39	320	State selection, Sept. 17th, 67, Appd. May 8th, 69.
Sw ¼	"	"	"	160	A. C. Scrip 413 Tenn. R. & R. 2911, Sept. 24th, 68.
All	15	"	"	640	P. C. 857, June 29th, 70.
N ½ ne ¼	17	"	"	80	P. C. 876, June 29th, 70.
W ½ nw ¼	"	"	"	80	P. C. 671, May 18th, 70, Canceled, Mch. 15th, 72, Hd. 7940, June 26th, 83, F. C. 5953, Dec. 10th, 88.
Se ¼ nw ¼—sw ¼ nw ¼ w ½ sw ¼	19	"	"	148.75	Hd. 641, Apr. 26th, 70, F. C. 389, May 30th, 76.
Ne ¼	21	"	"	160	P. C. 908, July 15th, 80.
Ne ¼ se ¼	"	"	"	40	M. B. L. W. 99134 R. & R. 204, Aug. 4th, 70.
Ne ¼	23	"	"	160	M. B. L. W. 108932 R. & R. 84, July 1st, 70.
Nw ¼	"	"	"	160	P. C. 837, June 23rd, 70.
Se ¼	"	"	"	160	P. C. 966, Aug. 2nd, 70.
Sw ¼	"	"	"	160	M. B. L. W. 109928 R. & R. 85 July 1st, 70.
Nw ¼	25	"	"	160	A. C. Scrip 421 Tenn. R. & R. 2912, Sept. 24th, 68.
Se ¼, sw ¼	"	"	"	320	State selection Sept. 17th, 67. Appd. May 8th, 69.
Sw ¼	29	"	"	160	P. C. 110, May 30th, 69.
Ne ¼	31	"	"	160	Hd. 188, May 31st, 69, F. C. 944, June 11th, 75.
Nw ¼	31	"	"	153.04	Hd. 462, Oct. 22nd, 69, F. C. 935, June 8th 75.
Se ¼	"	"	"	160	Hd. 3998, June 10th, 67, F. C. 352, June 6th, 73.
S ½ sw ¼	"	"	"	75.92	M. B. L. W. 105742 R. & R. 3870, June 30th, 67.
Se ¼	33	"	"	160	A. C. Scrip 2326 Ind. R. & R. 2257, July 29th, 67.
Se ¼	35	"	"	160	A. C. Scrip 397 Tenn. R. & R. 290, Sept. 24th, 68.
842					
Sw ¼ sw ¼ sw ¼ se ¼ & lot 2	17	137	39	119.50	D. S. 362, May 22nd, 70 & June 29th, 72, P. C. 141, Dec. 12th, 72.
Lot 4	19	"	"	3	D. S. 212, May 20th, 70 & June 21st, 72, P. C. 18, July 23rd, 72.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Nw ¼ se ¼—lot 7	31	"	"	87	D. S. 262, May 1st, 69 & June 24th, 72, A. C. Scrip 1567 Ga. R. & R. 82, Jany. 14th, 73.
Lot 6	"	"	"	20.25	D. S. 262, May 1st, 69 & June 24th, 72, P. C. 5729, May 26th, 92, N. P. selection, Mch. 15th, 83, Canceled by F. Aug. 15th, 88.
Lots 4, 5, 6, 10 sw ¼ nw ¼	3	141	39	155.45	White Earth Ind. Res. Apr. 18th, 67.
All	5	"	"	640.01	" " " "
All	7	"	"	672.17	" " " "
All	9	"	"	521.85	" " " "
Lot 1—ne ¼ se ¼ w ½ se ¼ sw ¼	11	"	"	318.75	" " " "
Lot 5 & sw ¼ & se ¼	13	"	"	353.75	" " " "
All	15	"	"	424.65	" " " "
All	17	"	"	640	" " " "
All	19	"	"	682.24	" " " "
All	21	"	"	640	" " " "
All	23	"	"	640	" " " "
All	25	"	"	566.58	" " " "
All	27	"	"	640	" " " "
All	29	"	"	500.50	" " " "
All	31	"	"	510.27	" " " "
843					
All	33	141	39	636.13	White Earth Ind. Res. Apr. 18th, 67.
All	35	"	"	640	" " " "
All	31	142	39	645.76	" " " "
S ½ se ¼	1	134	40	80	M. B. L. W. 49222 R. & R. 78, May 30th, 70.
N ½ se ¼ sw ¼ ne ¼	1	"	"	157.50	Hd. 681, May 23rd, 70, Canceled, Sept. 14th, 70, Hd. 7766, Jany. 8th, 83, F. C. 5966, Dec. 20th, 88.
Ne ¼	3	"	"	155.12	P. C. 560, Apr. 2nd, 70.
N ½ se ¼	"	"	"	80	P. C. 615, Apr. 13th, 70.
E ½ nw ¼—sw ¼ nw ¼	"	"	"	117.79	P. C. 561, Apr. 2nd. 70.
Lot 3	11	"	"	41.35	P. C. 3540, June 24th, 67.
Nw ¼	"	"	"	160	A. C. Scrip 36, Del. R. & R. 40, Oct. 14th, 69.
Sw ¼	"	"	"	160	A. C. Scrip 156 N. H. R. & R. 2060, June 24th, 67.
Lot 1	13	"	"	23.40	D. S. 184, Mch. 1st & Apr. 15th, 70, Hd. 19822, Mch. 1st, 98.
Lots 1 & 2	1	135	40	72.48	P. C. 111, May 13th, 69.
Nw ¼ ne ¼ lots 3 & 4	"	"	"	154.89	P. C. 724, May 9th, 70.
Lot 6	"	"	"	17.10	P. C. 689, May 10th, 70.
Ne ¼	3	"	"	163.11	M. B. L. W 109644 R & R. 73, May 19th, 70.
Nw ¼—nw ¼ se ¼ e ½ sw ¼—lots 1 & 4	"	"	"	343.91	P. C. 746, May 21st, 70.
Ne ¼ & se ¼	5	"	"	318.91	State selection on Jany. 28th, 68, Appd., May 8th, 69.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Nw ¼	"	"	"	158.31	P. C. 714, May 12th, 70.
Ne ¼ & se ¼	7	"	"	320	State selection, Jany. 28th, 68, Appd. May 8th, 69.
844					
Lots 3, 4, 5, 6, s ½ se ¼ n ½ sw ¼	9	135	40	280.55	P. C. 628, Apr. 6th, 70.
Ne ¼	11	"	"	160	A. C. Scrip 3791 R. & R. 2278, Aug. 6th, 67.
Sw ¼ & se ¼	"	"	"	320	State selection, June 28th, 68, Appd. May 8th, 69.
Ne ¼ & se ¼	13	"	"	320	State selection, Jany. 28th, 68, Appd. May 8th, 69.
Nw ¼	"	"	"	160	P. C. 686, May 10th, 70.
E ½ sw ¼ lots 1 & 2	"	"	"	158.42	P. C. 687, May 10th, 70.
Nw ¼ & sw ¼	15	"	"	320	State selection, Jany. 28th, 68. Appd. May 8th, 69.
Lot 4	19	"	"	43.10	P. C. 645, June 1st, 70.
Ne ¼	21	"	"	160	A. C. Scrip 6096 N. Y. R. & R. 232, Apr. 4th, 70.
Nw ¼	"	"	"	160	A. C. Scrip 6097 N. Y. R. & R. 233, Apr. 4th, 70.
W ½ se ¼—lots 1 & 2	21	"	"	146.65	A. C. Scrip 6099 N. Y. R. & R. 234, Apr. 4th, 70.
W ½ ne ¼	23	"	"	80	P. C. 814, June 18th, 70.
E ½ nw ¼	"	"	"	80	P. C. 812, June 18th, 70.
Se ¼	"	"	"	160	A. C. Scrip 254 Del. R. & R. 141, Dec. 31st, 69.
Sw ¼	"	"	"	160	A. C. Scrip 253 Del. R. & R. 142 Dec. 31st 69.
Lots 2, 3, 4, 5, 6 ne ¼ ne ¼	25	"	"	268.97	P. C. 692, May 10th, 70.
Lots 1 & 2	27	"	"	97.50	P. C. 5557, Apr. 2nd, 70.
Lot 6	"	"	"	10.85	School selection, Apr. 2nd, 70, Appd. Jany. 15th, 76.
North part of lot 1 & lots 2, 3, 4,	33	"	"	118.51	M. B. L. W. 91216 R. & R. 64, Apr. 8th, 70.
845					
Ne ¼ & se ¼	35	135	40	320	State selection, Jany. 28th, 68, Appd. May 8th, 69.
Nw ¼	"	"	"	160	A. C. Scrip 5958 N. Y. R. & R. 237, Apr. 8th, 70.
Nw ¼ & sw ¼	1	136	40	318.80	State selection, Jany. 28th, 68, Appd. May 8th, 69.
S ½ se ¼ & lots 1 & 2	"	"	"	156.80	Hd. 818, July 13th, 70, Canceled, Sept. 14th, 78, Hd. 8295, Nov. 11th, 84, F. C. 7353, Nov. 21st, 90.
Ne ¼	3	"	"	156.60	A. C. Scrip 854 Mass. R. & R. 249, May 4th, 70.
Nw ¼	"	"	"	156.20	A. C. Scrip 853 Mass. R. & R. 250, May 4th, 70.
Lots 1, 2, 3	"	"	"	106.88	M. B. L. W. 98400 R. & R. 77, May 26th, 70.
Lot 4 & nw ¼ sw ¼	"	"	"	72.23	P. C. 768, June 1st, 70.
Ne ¼ ne ¼ & lots 1 & 2	5	"	"	131.22	P. C. 625, Apr. 16th, 70.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Lots 3, 4, 5, 6, 7, sw ¼ nw ¼—nw ¼ Sw ¼	"	"	"	256.65	P. C. 626, Apr. 16th, 70.
Lots 8 & 9 sw ¼ se ¼	"	"	"	133.09	P. C. 627, Apr. 16th, 70.
Lot 1	9	"	"	5.95	P. C. 804, June 16th, 70.
Sw ¼ & se ¼	13	"	"	320	State selection Jany. 28th, 68, Appd. May 8th, 69.
S ½ ne ¼	21	"	"	80	M. B. L. W. 25233 R. & R. 6, May 21st, 70.
Ne ¼ se ¼ w ½ se ¼	"	"	"	158.66	P. C. 702, May 12th, 70.
E ½ sw ¼—lot 4	"	"	"	127.36	P. C. 703, May 12th, 70.
S ½ se ¼	23	"	"	80	Hd. 659, May 11th, 70, F. C. 1390, May 30th, 76.
Se ¼ sw ¼	23	"	"	40	Hd. 658, May 11th, 70, Canceled Dec. 11th, 75, D. S. 628, Mch. 13th & May 14th, 77.
Nw ¼ & sw ¼	25	"	"	320	P. C. 720, May 19th, 70.
846					
Ne ¼ & se ¼	25	136	40	320	P. C. 743, May 21st, 70.
Lot 1	27	"	"	43.34	P. C. 717, May 13th, 70.
Lot 8	"	"	"	28.24	P. C. 659, Apr. 26th, 70.
Lots 9 & 10	"	"	"	56.19	P. C. 713, May 12th, 70.
Lot 1	29	"	"	67.17	P. C. 705, May 12th, 70.
Lots 2, 3, 4, 5, 6, 7	"	"	"	237.36	P. C. 5652, Apr. 22nd, 70.
Se ¼	31	"	"	160	A. C. Scrip 373 Tenn. R. & R. 241, Apr. 22nd, 70.
Lots 1, 2, 3, 4, 5, 6, 7, 8,—w ½ nw ¼—se ¼ nw ¼	"	"	"	343.28	P. C. Apr. 22nd, 70.
Se ¼ ne ¼—w ½ ne ¼ lot 1	33	"	"	154.05	A. C. Scrip 5943 N. Y. R. & R. 253, May 13th, 70.
Lots 2 & 3	"	"	"	90.70	P. C. 654, Apr. 22nd, 70.
Lot 4	"	"	"	58.02	P. C. 711, May 12th, 70.
Nw ¼ se ¼—e ½ se ¼ lot 5	"	"	"	159.71	A. C. Scrip 5313 N. Y. R. & R. 251, May 12th, 70.
Ne ¼ & se ¼	35	"	"	320	State selection, Jany. 28th, 68, Appd. May 8th, 69.
S ½ sw ¼	"	"	"	80	P. C. 712, May 12th, 70.
S ½ nw ¼	"	"	"	80	Hd. 463, Oct. 22nd, 69, Canceled, June 11th, 77, Hd. 5983, Feb. 11th, 80, F. C. 4842, May 22nd. 85.
N ½ sw ¼	"	"	"	80	Hd. 463, Oct. 22nd, 69, Canceled June 11th, 77, Hd. 6008, Feb. 24th, 80, F. C. 4843 May 22nd, 85.
N ½ se ¼	11	137	40	80	D. S. 1016, Aug. 15th, 70 & Jany. 27th, 72, P. C. 109, June 24th, 74.
N ½ ne ¼—sw ¼ ne ¼ lots 4 & 5	"	"	"	183	D. S. 1077, Aug. 12th, 70, Mch. 11th, 72, Hd. 183, June 10th, 73 F. C. 44, Nov. 13th, 74.

847

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS
		N.	W.		
Lots 1 & 2—s ½ ne ¼ se ¼ nw ¼	13	137	40	187.20	D. S. 1011, May 15th, 70 & June 27th, 72, A. C. Scrip 1115 Ga. R. & R. 50, Nov. 8th, 72.
Lot 3—nw ½ nw ¼	"	"	"	74	D. S. 1011, May 15th, 70 & Jany. 27th, 72, P. C. 12, June 20th, 72.
Lots 4 & 5	"	"	"	79.20	D. S. 212, May 20th, 70 & June 21st, 72, A. C. Scrip 413, Va. R. & R. 18, July 23rd, 72.
N ½ se ¼	"	"	"	80	D. S. 213, May 20th, 70 & June 21st, 72, P. C. 142, Dec. 12th, 72.
F ½ se ¼	15	138	40	80	D. S. 1008, Aug. 23rd, 70 & Jany. 27th, 72, A. C. Scrip 1564 Ga. R. & R. 81, Jany. 13th, 73.
All	1	141	40	452.38	White Earth Ind. Res. Apr. 18th, 67.
All	3	"	"	643.61	" " " "
All	5	"	"	593.29	" " " "
All	7	"	"	595.37	" " " "
All	9	"	"	634.50	" " " "
All	11	"	"	640	" " " "
All	13	"	"	640	" " " "
All	15	"	"	640	" " " "
All	17	"	"	596.90	" " " "
All	19	"	"	626.91	" " " "
All	21	"	"	640	" " " "
All	23	"	"	613.10	" " " "
All	25	"	"	640	" " " "
All	27	"	"	570.15	" " " "
All	29	"	"	463.55	" " " "
All	31	"	"	642.74	" " " "

848

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS
All	33	141	40	632	White Earth Ind. Res. Apr. 18th, 67.
All	35	"	"	608.15	" " " "
Lots 5 & 6	17	142	40	55.75	" " " "
All	19	"	"	593.10	" " " "
Lots 4, 5, 6, 7, 8, 9, 10, s ½ sw ¼—w ½ se ¼	21	"	"	385.40	" " " "
Lot 9—sw ¼ sw ¼	23	"	"	73.80	" " " "
Lots 2, 3, 5, 6—se ¼ se ¼	25	"	"	151.75	" " " "
All	27	"	"	640	" " " "
All	29	"	"	640	" " " "
All	31	"	"	538.93	" " " "
All	33	"	"	640	" " " "
All	35	"	"	244.90	" " " "
Se ¼ nw ¼—lots 2, 4, 9	7	139	41	141.66	D. S. 343, Dec. 7th, 69 & June 25th, 72, P. C. 55, June 23rd, 72.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Lot 7— n ½ se ¼ se ¼ sw ¼	7	129	41	152.75	D. S. 341, Aug. 10th, 70 & June 26th, 72, F. C. 324 Nov. 13th, 72.
Sw ¼ se ¼	"	"	"	40	D. S. 85, June 20th, 68 & June 10th, 72, Hd. 1353 May 30th, 78, F. C. 307, May 30th, 78.
Lots 4 & 5	9	"	"	119.50	D. S. 28, Oct. 1st, 69 & Aug. 19th, 72, F. C. 25, July 30th, 72.
N ½ sw ¼ lots 3, 4, 5,	15	"	"	170.00	D. S. 1 Sept. 10th, 70 & June 10th, 72.
W ½ nw ¼	35	"	"	80	D. S. 3, July 20th, 70 & June 10th, 72, A. C. Scrip 129 Va. M. & M. June 20th, 72.
Nw ¼ se ¼ ne ¼ sw ¼ lots 2 & 3	"	"	"	154.65	D. S. 10, June 10th, 70 & June 10th 72, F. C. 54, July 23rd.
849					
Lots 3, 4, 5, 6	21	140	41	123.25	D. S. 294, Aug. 23rd, 70 & June 24th, 72, Hd. 3455, Aug. 14th, 80, F. C. 702, Aug. 14th, 80.
Sw ¼ nw ¼—lot 3	29	"	"	77.75	D. S. 506, July 7th, 70 & July 23rd, 72.
Lots 7 & 8	"	"	"	66.50	D. S. July 20th, 70 & June 29th, 72, Hd. 2203, May 14th, 79, F. C. 537, May 14th, 79.
E ½ se ¼	"	"	"	80	D. S. 474, July 6th, 70 & June 17th, 72, Hd. 3000, Oct. 3rd, 79, F. C. 600, Oct. 3rd, 79.
Lot 1	"	"	"	45.25	D. S. 568, Sept. 9th, 70 & Aug. 30th, 72.
W ½ se ¼—e ½ sw ¼	33	"	"	160	D. S. 532, July 6th, 69 & July 22nd, 70, A. C. Scrip 585 Va. M. & M. 32, Aug. 19th, 72.
All	1	141	41	566.61	White Earth Ind. Res. Apr. 19th, 67.
All	3	"	"	647.43	" " " "
All	5	"	"	646.96	" " " "
All	7	"	"	649.02	" " " "
All	9	"	"	640	" " " "
All	11	"	"	500.25	" " " "
All	13	"	"	544.60	" " " "
All	15	"	"	512.50	" " " "
All	17	"	"	640	" " " "
All	19	"	"	656.90	" " " "
All	21	"	"	607.60	" " " "
All	23	"	"	640	" " " "
All	25	"	"	634.70	" " " "
All	27	"	"	634.70	" " " "
850					
All	29	141	41	640	White Earth Ind. Res. Apr. 19th, 67.
All	31	"	"	646.42	" " " " "
All	33	"	"	640	" " " " "
All	35	"	"	637.25	" " " " "

[illegible]

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REFERENCES.
		N.	W.		
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	do do do do do
All	[illegible]	do	do	[illegible]	do do do do do
All	[illegible]	do	do	[illegible]	do do do do do
Lots [illegible]	[illegible]	do	do	[illegible]	do do do do do
West parts of lot [illegible] lots [illegible]	[illegible]	do	do	[illegible]	do do do do do
All	[illegible]	do	do	[illegible]	do do do do do
All	[illegible]	do	do	[illegible]	do do do do do
All	[illegible]	do	do	[illegible]	do do do do do
All	[illegible]	do	do	[illegible]	do do do do do
All	[illegible]	do	do	[illegible]	do do do do do
All	[illegible]	do	do	[illegible]	do do do do do
All	[illegible]	do	do	[illegible]	do do do do do
All	[illegible]	do	do	[illegible]	do do do do do
All	[illegible]	do	do	[illegible]	do do do do do
All	[illegible]	do	do	[illegible]	do do do do do
All	[illegible]	do	do	[illegible]	do do do do do
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

[illegible]

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REFERENCES.
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	do	do	[illegible]	[illegible]
Lots [illegible]	[illegible]	do	do	[illegible]	[illegible]
Lots [illegible]	do	do	do	[illegible]	[illegible]
Lots [illegible]	[illegible]	do	do	[illegible]	[illegible]
[illegible]	do	do	do	[illegible]	[illegible]
Lot [illegible]	[illegible]	do	do	[illegible]	[illegible]
[illegible]	[illegible]	do	do	[illegible]	[illegible]
[illegible]	[illegible]	do	do	[illegible]	[illegible]

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Lot 1—se ¼ nw ¼ w ½ ne ¼	"	"	"	157.10	D. S. 960, July 12th, 70 & Jany. 13th, 72. Hd. 839, Oct. 14th, 73, F. C. 128, Feb. 23rd, 76.
Se ¼	31	140	42	160	D. S. 1049, Jany. 10th, 70 & Feb. 5th, 72. A. C. Scrip 1102 Ga. R. & R. 53, Nov. 14th, 72.
Se ¼ sw ¼—lots 3 & 4	"	"	"	111.25	D. S. 1050, Jany. 10th, 70 & Feb. 5th, 72, A. C. Scrip 1162 Ga. R. & R. 56, Nov. 7th 72.

852

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
Lots 7 & 8	33	140	42	17.40	D. S. 1082, July 5th, 70 & Feb. 26th, 72, Hd. 957, Dec. 7th, 77, F. C. 216, Dec. 7th, 77.
All	1	141	42	646.79	White Earth Ind. Res, Apr. 18th, 67.
All	3	"	"	648.10	" " " " "
All	5	"	"	642.99	" " " " "
All	7	"	"	805.33	" " " " "
All	9	"	"	640	" " " " "
All	11	"	"	640	" " " " "
All	13	"	"	640	" " " " "
All	15	"	"	640	" " " " "
All	17	"	"	640	" " " " "
All	19	"	"	798.98	" " " " "
All	21	"	"	640	" " " " "
All	23	"	"	590.98	" " " " "
All	25	"	"	628	" " " " "
All	27	"	"	595.20	" " " " "
All	29	"	"	640	" " " " "
All	31	"	"	778.24	" " " " "
All	33	"	"	640	" " " " "
All	35	"	"	639.99	" " " " "
All	1	142	42	638.72	" " " " "
All	3	"	"	637.12	" " " " "
All	5	"	"	601.45	" " " " "
All	7	"	"	823.60	" " " " "
All	9	"	"	564.50	" " " " "
All	11	"	"	640	" " " " "
All	13	"	"	640	" " " " "
All	15	"	"	640	" " " " "

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PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
All	17	142	42	640	White Earth Ind. Res. Apr. 18th, 67.
All	19	"	"	812.92	" " " " "
All	21	"	"	588.90	" " " " "
All	23	"	"	640	" " " " "
All	25	"	"	640	" " " " "
All	27	"	"	640	" " " " "
All	29	"	"	640	" " " " "
All	31	"	"	804.75	" " " " "
All	33	"	"	640	" " " " "
All	35	"	"	640	" " " " "

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ss ½ nw ¼ & sw ¼ & s ½ se ¼	29	143	42	320	" " " " "
All	31	"	"	830.11	" " " " "
S ½ ne ¼ nw ¼ sw ¼ & se ¼	33	"	"	560	" " " " "
S ½ ne ¼— s ½ nw ¼ sw ¼ & se ¼	35	"	"	480	" " " " "
Se ¼ ne ¼—ne ¼ se ¼ lots 10, 11, 12	1	139	43	169.55	D. S. 37. Sept. 20th, 70 & Jany. 29th, 72, Hd. 819, June 8th, 77, F. C. 246, Mch 1st, 78.
Lots, 1, 2, 3,—sw ¼ ne ¼	3	"	"	122.77	D. S. 962, May 23rd, 70 & Jany. 13th, 72 P. C. 136 Dec. 9th, 72.
Lot 1	13	"	"	38.95	D. S. 973, July 7th, 70 & Jany. 13th, 72, Hd. 747, Feb. 6th, 77, F. C. 848, Mch. 10th, 81.
Lot 3	"	"	"	34.20	D. S. 972, Aug. 2nd, 70 & Jany 13th, 72, Hd. 764, Mch. 2nd, 77, F. C. 829, Jany. 14th, 81.
Lots 4 & 5 sw ¼ se ¼	23	139	43	117.35	D. S. 993, June 18th, 70 & Jany. 19th, 72, P. C. 414, Sept. 1st, 75.
E ½ ne ¼—nw ¼ ne ¼ lots 1 & 2	25	"	"	169	D. S. 970, June 10th, 70 & Jany. 13th, 72, Hd. 128, Sept. 24th, 72, F. C. 35, Oct. 31st, 74.
854					
E ½ se ½—sw ¼ se ¼ lot 4	25	139	43	157.30	D. S. 1092, June 10th, 70 & Mch. 6th, 72, A. C. Scrip 534 R. & R. 35, Aug. 27th, 72.
Lots 5, 6, 7, 8, se ¼ sw	"	"	"	59.60	D. S. 963, June 10th, 70 & Jany. 13th, 72, Hd. 153, Nov. 8th, 72, F. C. 156, Nov. 14th, 76
Lot 5	35	140	43	35.40	D. S. 320, June 11th, 70 & Jany. 25th, 72, P. C. 283, Aug. 14th, 73.

(List 10) 5th Mer.

20 mile limits N. P. conflict with 20 mile (Ind.) limits St. Vin. Ext'n of St. P. & P.—Definite location from Thomson's Junction to the Red River of the North—Nov. 20, '71.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
N ½ se ¼—n ½ sw ¼	7	131	36	163.77	D. S. 1247, Mch. 10th, 71 & Jany. 3rd, 72, Hd. 2924, Feb. 16th 75, F. C. 3350, Nov. 11th, 81.
Sw ¼ se ¼	"	"	"	40	D. S. 1246, July 27th, 69 & June 3rd, 72, Hd. 4216, May 23rd, 78, F. C. 3756, Jany. 12th, 83.
Se ¼ se ¼	1	131	37	40	D. S. 1385, Aug. 26th, 71 & July 22nd, 72. Hd. 3434, Dec. 20th, 76, F. C. 3830, Apr. 5th, 83.
Sw ¼ se ¼—se ¼ sw ¼	"	"	"	80	D. S. 1334, Mch. 20th, 71 & July 3rd, 72, Hd. 3433, Dec. 20th 76, F. C. 3943, June 21st, 83.
Lot 4	3	"	"	40.37	D. S. 1232, July 30th, 71 & May 29th, 72, Hd. 3440, Dec. 29th, 76, F. C. 3041, May 26th, 82.
855					
S ½ nw ¼—n ½ sw ¼	3	131	37	160	D. S. 1165, May 6th, 70 & May 7th, 72, Hd. 2807, May 23rd, 74, F. C. 2784, July 8th, 79.
S ½ sw ¼	"	"	"	80	D. S. 1178, May 11th, 70 & May 13th, 72, Hd. 2921, Feb. 9th, 75. F. C. 3220 May 1st, 81.
Sw ¼ ne ¼	5	"	"	40	D. S. 1254, Mch. 1st, 71 & June 26th, 72, Hd. 3366, Oct. 21st, 76, F. C. 3034, Dec. 14th, 80.
Nw ¼	"	"	"	165.89	Hd. 4706, June 7th, 79, F. C. 4189, Jany. 19th, 84, D. 1331, June 28th, 71 & July 3rd, 72.
Sw ¼	31	132	37	157.41	D. S. 1225, Sept. 3rd, 70 & May 31st, 72, P. C. 1680, Dec. 15th, 73.
S ½ nw ¼ n ½ se ¼	"	"	"	160	D. S. 231, May 20th, 71 & May 29th, 72 Hd. 8350, Feb. 18th, 85, F. C. 7103, Mch. 26th 90.
Ne ¼ ne ¼	"	"	"	40	D. S. 1289, May 23rd, 71 & June 19th, 72.
Ne ¼ ne ¼	33	"	"	40	Hd. 493, Dec. 2nd, 85, F. C. 7692, Nov. 19th, 91, D. S. 1219 May 28th, 70 & May 24th 72.
W ½ sw ¼	"	"	"	80	D. S. 1233, Aug. 30th, 71 & May 29th, 72 Hd. 3441, Dec. 29th, 76, F. C. 3543, May 26th 82.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Sw ¼ se ¼—se ¼ sw ¼	"	"	"	80	D. S. 3145, Feb. 20th, 69 & July 8th, 72, Hd. 419, June 30th, 85, F. C. 5437, Dec. 18th, 86.
W ½ se ¼	29	133	38	80	A. C. Scrip 1014, Ten. R. & R. 646, Sept. 24th, 68.
Ne ¼	31	"	"	160	A. C. Scrip 642, Tenn. R. & R. 2958, Sept. 24th, 68.
Lots 1 & 2	"	"	"	90.20	M. B. L. W. 460340, R. & R. Oct. 21st, 68.

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PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
Sw ¼ sw ¼ e ½ sw ¼	31	133	38	315.75	State selection, Sept. 17th, 67, Appd. May 8th, 69.
W ½ se ¼—se ¼ se ¼	33	"	"	120	A. C. Scrip 650, Tenn. R. & R. 2966, Sept. 24th, 68.
Sw ¼	"	"	"	160	A. C. Scrip 649, Tenn. R. & R. 2965, Sept. 24th, 68.
Nw ¼	5	133	39	157.08	A. C. Scrip 1178, Ills. R. & R. 2706, Oct. 15th, 67.
Lots 3, 5, nw ¼ sw ¼	"	"	"	114.50	A. C. Scrip 1177, Ill. R. & R. 2705, Oct. 15th, 67.
Lot 2	"	"	"	22.20	P. C. 3726, Oct. 19th, 67.
Lot 4	"	"	"	54.60	P. C. 3727, Oct. 19th, 67.
N ½ ne ¼—lot 1	"	"	"	108.89	Hd. 616, Mch. 25th, 70, Canceled Sept. 14th, 78, Hd. 7834, Mch. 13th, 73, F. C. 5861, July 26th, 88.
Nw ¼ sw ¼	9	"	"	320	State selection, Sept. 17th, 67, Appd. May 8th, 69.
Se ¼	15	"	"	160	A. C. Scrip 2922, Penn. R. & R. 2796 Nov. 20th, 67.
Sw ¼	"	"	"	160	A. C. Scrip 2923 Penn. R. & R. 2797, Nov. 20th, 67.
Ne ¼	17	"	"	160	A. C. Scrip 1185, Ills. R. & R. 2714, Oct. 15th, 67.
Lots 1 & 2	"	"	"	106.20	A. C. Scrip 1104, Mass. R. & R. 2823, Dec. 6th, 67.
Se ¼	"	"	"	160	A. C. Scrip 1186, Ills. R. & R. 2715, Oct. 15th, 67.
E ½ sw ¼ sw ¼ sw ¼ & lot 3	"	"	"	158.15	A. C. Scrip 1187, R. & R. 2716, Oct. 15th, 67.
W ½ ne ¼—e ½ nw ¼ e ½ sw ¼—nw ¼ se ¼ & lot 2	19	"	"	317.75	State selection. Sept. 17th, 67. Appd. May 8th, 69.
Sw ¼ nw ¼	"	"	"	34.95	M. B. L. W. 77825 R. & R. 3922. Oct. 16th, 67.
Lot 1	"	"	"	24.70	P. C. 3719. Oct. 16th, 67.
W ½ sw ¼	"	"	"	68.76	M. B. L. W. 106080 R. & R. 3926. Oct. 16th, 67.

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		5th Mer.			
PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼	21	133	39	160	A. C. Scrip 35 Penn. R. & R. 1161, Dec. 12th, 66.
Nw ¼	"	"	"	160	A. C. Scrip 36 Penn. R. & R. 1444 Dec. 12th, 66.
Lot 3	23	"	"	36.35	P. C. 4253, Sept. 24th, 68.
Lot 2	25	"	"	10.30	P. C. 4328, Oct. 31st, 68.
Lots 3 & 4	"	"	"	62.15	P. C. 4253, Oct. 24th, 68.
E ½ ne ¼—sw ¼ ne ¼ & lot 3	27	"	"	159.70	A. C. Scrip 96 Penn. R. & R. 1162, Dec. 12th, 66.
S ½ sw ¼—lots 1 & 2	"	"	"	135.35	A. C. Scrip 37 Penn. R. & R. 1145, Dec. 12th, 66.
Se ¼	"	"	"	160	A. C. Scrip 38 Penn. R. & R. 1146, Dec. 12th, 66.
E ½ sw ¼—nw ¼ sw ¼ & lot 4	"	"	"	152.20	A. C. Scrip 39 Penn. R. & R. 1146, Dec. 12th, 66.
Lot 1	31	"	"	26.50	M. B. L. W. 95820 R. & R. 3950, Dec. 6th, 67.
S ½ sw ¼	33	"	"	80	M. B L. W. 112375 R. & R. 489, July 18th, 71. C. C. 655.
N ½ sw ¼—sw ¼ nw ¼	"	"	"	152	Hd. 3557, Mch. 2nd, 67 Canceled July 24th, 74. Hd. 7862, Apr. 16th, 83. F. C. 6737, May 24th, 89.
South part of lot 2	29	134	39	33	Hd. 662, May 11th, 70. F. C. 938, June 8th, 75.
W ½ se ¼	29	134	39	80	A. C. Scrip 1191 Ills. R. & R. 2720, Oct. 15th, 67.
S ½ sw ¼—lots 3 & 4	"	"	"	174.40	M. B. L. W. 101855 R. & R. 3925, Oct. 16th, 67.
E ½ ne ¼—lots 1 & 2	31	"	"	179.80	M. B. L. W. 96936 R. & R. 3926, Oct. 16th, 67.
Se ¼	"	"	"	160	A. C. Scrip 1188 Ills. R. & R. 2717, Oct. 15th, 67.
Lots 3 & 4—se ¼ sw ¼	"	"	"	120.69	M. B. L. W. 102449 R. & R. 3707, June 5th, 66.

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W ½ nw ¼	33	134	39	80	P. C. 991, Aug. 11th, 70.
Ne ¼ sw ¼—w ½ sw ¼ lot 4	"	"	"	154.63	A. C. Scrip 922, Mass. R. & R. 2738, Oct. 19th, 67.
Lots 1, 2, 5, 6	1	133	40	163.83	Hd. 316, July 5th, 69, Canceled, June 11th, 74. D. S. 1034, Mch. 28th, & 29th, 83. P. C. 2850, Oct. 8th, 83.
Lot 7—se ¼ ne ¼	"	"	"	90.88	M. B. L. W. 94407 R. & R. 3893, June 5th 67.
Sw ¼ sw ¼	"	"	"	83.43	M. B. L. W. 79708 R. &. R. 20th, Sept. 9th, 69.
Lots 1, 2,—s ½ se ¼	3	"	"	177.42	M. B. L. W. 96038 R. & R. 3937, Nov. 13th, 67.
S ½ sw ¼—lots 3 & 4	"	"	"	143.17	A. C. Scrip 2187 Ind. R. & R. 2193, June 29th, 67.
Lots 2, 3, 4—sw ¼ nw ¼	5	"	"	163.49	M. B. L. W. 105891 R. & R. 3888, June 29th, 67.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Lots 5, 6, 7, 11	"	"	"	145.48	M. B. L. W. 29813 R. & R. 3889, June 29th, 67.
Lot 10	"	"	"	26.50	Hd. 3912, June 18th, 67, Canceled, May 20th, 70, Hd. 735, June 9th, 70, Canceled, Dec. 14th, 71, Hd. 8436, Sept. 1st, 85, F. C. 5390, Oct. 19th, 86.
Se ¼	7	"	"	160	A. C. Scrip 40, Penn. R. & R. 1148, Dec. 12th, 66.
Ne ¼	9	"	"	160	A. C. Scrip 2092 Ind. R. & R. 2095, June 28th, 67.
Nw ¼	"	"	"	160	A. C. Scrip 570 R. I. R. & R. 103, May 8th, 65.
Se ¼	"	"	"	160	A. C. Scrip 2093 Ind. R. & R. 2096, June 29th, 67.
Sw ¼	"	"	"	160	A. C. Scrip 1163, Ills. R. & R. 2691, Oct. 15th, 67.
Ne ¼ ne ¼—w ½ ne ¼ lot 1—nw ¼	11	"	"	315.12	State selection, Sept. 17th, 67 Appd. May 8th, 69.
Sw ¼	"	"	"	160	A. C. Scrip 1160, Ills. R. & R. 2688, Oct. 15th, 67.
				5th Mer.	
[—]					
W ½ se ¼—lots 2 & 3	11	133	40	148.61	A. C. Scrip 1159 Ills. R. & R. 2697, Oct. 15th, 67.
Lot 4	13	"	"	30.38	Hd. 1344, Aug. 21st, 69. Com. to A. C. Scrip 500 Ga. R. & R. 459, May 13th, 72.
Lot 3	"	"	"	29.85	Hd. 5392, Aug. 1st, 68. Canceled Aug. 19th, 76. D. S. 1068, Oct. 19th, & 20th, 83—P. C. 2979, Oct. 15th, 84.
Lot 2	"	"	"	45.50	Hd. 5392, Aug. 1st, 68. Aug. 19th, 76. D. S. 1112, Jany. 5 & 15th, 85. P. C. 3074, Dec. 15th, 85.
Sw ¼ nw ¼ lot 5	"	"	"	92.53	P. C. 615, Mch. 24th, 70. F. C. 298, Feb. 27th, 73.
Lot 1	"	"	"	39.54	Hd. 5392, Aug. 1st 69. Canceled Aug. 19th, 76. D. S. 870, Dec. 31st, 69 & Jany. 19th, 70.
Lots 6 & 7	"	"	"	68.72	School selection, Apr. 2nd, 70. Appd. Jany. 15th, 76.
Ne ¼	15	"	"	160	A. C. Scrip 1165 Ills. R. & R. 2693, Oct. 15th, 67.
Se ¼	"	"	"	160	A. C. Scrip 1166 Ills. R. & R. 2694, Oct. 15th, 67.
Nw ¼ & sw ¼	"	"	"	320	State selection, Sept. 17th, 67. Appd. May 8th, 69.
Ne ¼—nw ¼	17	"	"	332.25	State selection, Sept. 17th, 67. Appd. May 8th, 69.
Ne ¼	21	"	"	160	A. C. Scrip 1171 Ills. R. & R. 2699, Oct. 15th, 67.
Ne ¼	23	"	"	160	A. C. Scrip 938 Ky. R. & R. 2013, June 15th, 67.
Nw ¼	"	"	"	160	A. C. Scrip 3428 Ohio R. & R. 2003, June 15th, 67.
Sw ¼	"	"	"	160	A. C. Scrip 1167 Ills. R. & R. 2695, Oct. 15th, 67.
W ½ se ¼—lots 1 & 2	"	"	"	156.85	A. C. Scrip 736 Md. R. & R. 1825, May 18th, 67.

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5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼	25	133	40	160	A. C. Scrip 2015 Ind. R. & R. 2012, June 15th, 67.
N ½ se ¼—lots 4 & 5	"	"	"	135.14	A. C. Scrip 1101 Mass. R. & R. 2824, Dec. 6th, 67.
E ½ sw ¼—sw ¼ sw ¼ & lot 3	7	134	40	156.40	Hd. 881, Aug. 31st, 70, F. C. 2115, July 17th, 77.
S ½ sw ¼—w ½ sw ¼	9	"	"	160	D. S. 265, Aug. 31 & 31st, 70, D. S. 266, Aug. 31 & 31st, 70, Hd. 8563, Apr. 30th, 86, F. C. 7506, May 7th, 91.
S ½ nw ½—n ½ sw ¼	"	"	"	160	D. S. 265, Aug. 31 & 31st. 70, D. S. 266, Aug. 31st, & 31st, 70, Hd. 8564, Jany. 19th, 86, F. C. 8098, Jany. 19th, 93.
Lot 2	13	"	"	40.70	D. S. 184, Mch. 1st, & Apr. 15th, 70, Hd. 19822, Mch. 1st, 89.
Ne ¼	15	"	"	160	A. C. Scrip 1185, Penn.. R. & R. 836, Oct. 22nd, 66.
Se ¼	"	"	"	160	A. C. Scrip 1187, Ky. R. & R. 827 1/2, Oct, 20th, 66.
Ne ¼ & se ¼	17	"	"	320	State selection, Sept. 17th, 67, Appd. May 8th, 69.
Lots 1, 2, 3.	19	"	"	154.50	Hd. 933, Nov. 14th, 70, Canceled, Apr. 7th, 73, Hd. 7944, June 29th, 83, Canceled, Jany. 5th, 89, Hd. 8900, Jany. 5th, 89, F. C. 8552, Oct. 26th, 94.
Se ¼	21	"	"	160	A. C. Scrip 1462 R. & R. 167, Feb. 17th, 70.
W ½ nw ¼	"	"	"	80	D. S. 229, June 24 & 24th, 70, Hd. 8745, Sept. 23rd, 87, F. C. 7999, Nov. 3rd, 92.
E ½ nw ¼	"	"	"	80	D. S. 229, June 24 & 24th, 70 Hd. 8749, Oct. 1st, 87, F. C. 7998, Nov. 3rd, 92.
Lot 1	27	"	"	41.40	M. B. L. W. 99674 R. & R. 52, Feb. 19th, 70.
Ne ¼ se ¼—w ½ se ¼ lot 1	"	"	"	159.20	A. C. Scrip 1351 Ky. R. & R. 2981, Nov. 17th, 68.
860					
Nw ¼	29	134	40	160	Hd. 932, Nov. 14th, 70. Canceled Apr. 7th, 73. Hd. 7923, June 12th, 83. Canceled Mch. 10th, 86. Hd. 8533, Mch. 10th, 86. F. C. 7891, June 22nd, 92.
Sw ¼	"	"	"	160	A. C. Scrip 1775 R. & R. 2979, Nov. 17th, 68.
Ne ¼ nw ¼	31	"	"	41	Hd. 900, Oct. 1st, 70. F. C. 2114 July 16th, 77.
N ½ ne ¼ sw ¼ ne ¼ lot 1	"	"	"	169.85	D. S. 2064, Aug. 31 & 31st, 70. Hd. 8763, Oct. 27th, 87. F. C, 5716, Jany. 31st, 88.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Lot 5	19	135	40	38.45	P. C. 766, June 1st, 70.
South parts of lot 1 sw ¼ se ¼	33	"	"	59.05	M. B. L. W. 91216 R. & R. 64, Apr. 8th, 70.
Se ¼ sw ¼ lot 5	"	"	"	83.90	M. B. L. W. 109219 R. & R. 62, Apr. 8th, 70.
W ½ ne ¼—e ½ nw ¼	13	134	41	160	D. S. 1264, Oct. 15th, 69 & June 8th, 72. D. S. 1987, Oct. 1st, 73 & Mch. 26th, 77. Hd. 15692, May 5th, 92. F. C. 9315, July 19th, 97.
Se ¼ se ¼	15	"	"	40	D. S. 1335, July 2nd, 70 & July 3rd, 72. P. C. 1763, Mch. 17th, 67.
N ½ nw ¼	23	"	"	80	D. S. 1335, July 2nd, 70 & July 3rd, 72. P. C. 1763, Mch. 17th, 76.
S ½ ne ¼—n ½ se ¼	"	"	"	160	D. S. 1349 July 16th, 70 & July 11th, 72—Hd. 3476, Feb. 13th, 77. F. C. 2665, Mch. 20th, 79.
S ½ ne ¼—se ¼ nw ¼ & lot 3	25	"	"	160.05	D. S. 1364 Oct. 1st, 70 & July 17th, 77. Hd. 4001, Apr. 18th, 70. F. C. 2664, Mch. 20th, 79.
Sw ¼ nw ¼—lots 4, 5, 6	5	137	42	158.70	D. S. 3099 June 12th, 70 & July 3rd, 72. A. C. Scrip 1570 Ga. R. & R. 73, Dec. 12th, 72.
Ne ¼ sw ¼ & lot 3	31	"	"	80	D. S. Apr. 15th, 70 & July 23rd, 72. Hd. 9849, June 19th, 83. C. C. 4180 May 21st, 85.
861					
S ½ sw ¼	31	137	42	80	D. S. 507, Apr. 15th, 70 & July 23rd, 72, Hd. 847, July 9th, 77, F. C. 1375, June 8th, 83.
E ½ sw ¼—lot 4	31	138	42	123.03	D. S. 598, Aug. 1st, 70 & Sept. 2nd, 72, Hd. 971, Dec. 14th, 77, F. C. 909, July 8th, 91.
S ½ sw ¼	1	136	43	80	A. C. Scrip 713, S. C. R. & R. 322, Mch. 10th, 71.
S ½ se ¼	"	"	"	80	A. C. Scrip 729 S. C. R. & R. 414, Sept. 30th, 71, D. S. 562, Jany. 30th, 70 & Feb. 22nd, 71.
Se ¼ ne ¼—ne ¼ se ¼	5	"	"	80	D. S. —— June 8th, & Dec. 21st, 70, Hd. 3334, Sept. 30th, 76, F. C. 2565, Nov. 20th, 78.
N ½ sw ¼—se ¼ sw ¼ sw ¼ se ¼	"	"	"	160	D. S. 493, June 8th, 70 & Jany. 1st, 71, Hd. 3335, Sept. 14th, 76, F. C. 2734, May 22, 79.
Se ¼ nw ¼	"	"	"	40	D. S. 495, June 20th, 70 & Jany. 10th, 71.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		5th Mer.			
		N.	W.		
Sw ¼ nw ¼—lot 4	“	“	“	82	Hd. 15144, May 9th, 91, F. C. 7510, May 9th, 91, D. S. 495, June 2nd, 70 & Jany. 10th, 71.
W ½ se ¼ se ¼ se ¼	7	“	“	120	D. S. 458, Apr. 17th, & Dec. 21st, 70, P. C. 359, May 19th, 71.
Nw ¼ nw ¼	“	“	“	25.76	D. S. 460, June 20th, 69 & Dec. 21st, 70, P. C. 357, May 18th, 71.
W ½ ne ¼ ne ¼ nw ¼	“	“	“	120	D. S. 408, Apr. 17th, & Dec. 12th, 70 P. C. 1658,Sept. 17th, 73.
Ne ¼ se ¼—se ¼ ne ¼	“	“	“	80	D. S. 461, June 20th, & Dec. 21st, 70, Hd. 3333, Sept. 11th, 76. F. C. 3484, Mch. 11th. 82.
Ne ¼ ne ¼	“	“	“	40	D. S. 460, June 20th, 69 & Dec. 21st, 70.
862					
Ne ¼	9	136	43	160	D. S. 5024, Aug. 8th, 69 & Jany. 20th, 71, A. C. Scrip 1815, Tenn. R. & R. 415, Sept. 30th, 71.
Nw ¼	“	“	“	160	A. C. 167, S. C. R. & R. 301, Jany. 20th, 71.
Lots 6 & 7 se ¼ se ¼	11	“	“	107.75	D. S. 539, Aug. 15th, 70 & Feb. 3rd, 71, Hd. 873, Oct. 29th, 88, F. C. 8856 Nov. 4th, 95.
Ne ¼	17	“	“	160	D. S. 577, June 16th, Dec. 30th, 70, P. C. 1659, Sept. 17th, 73.
Se ¼	“	“	“	160	D. S. 476, June 56 & Dec. 30th. 70. P. C. 1673, Nov. 10th, 73.
N ½ ne ¼—sw ¼ nw ¼	21	“	“	120	D. S. 472, June 15th, & Dec. 30th, 70 Hd. 3382, Sept. 14th. 76, F. C. 2563, Nov. 20th, 78.
W ½ nw ¼—w ½ sw ¼	23	“	“	160	D. S. 572, Feb. 14th. 70 & Feb. 27th, 71, A. C. Scrip 737, S. C. R. & R. 321, May 1st, 71.
Lots 4 & 5	1	137	43	84.50	D. S. 303, July 20th, 70, & June 25th, 72, 3371, Dec. 23rd, 72. Hd. 860, Aug. 14th,
N ½ sw ¼—nw ¼ se ¼ lot 2	11	“	“	171	D. S. 367, June 7th, 68 & June 29th, 72, Hd. 4698, Dec. 6th, 80, F. C. 800.
Sw ¼ sw ¼	21	“	“	40	D. S. 501, May 29th, 70 & July 23rd, 72. Hd. 860, Aug. 14th, 77. F. C. 185, Aug. 14th, 77.
Ne ¼ ne ¼	29	“	“	40	D. S. 501, May 29th, 70 & July 23rd, 72. Hd. 860, Aug. 14th, 77. F. C. 185, Aug. 14th, 77.
Sw ¼ sw ¼—lots 7, 8, 9	“	“	“	141.90	D. S. 5004, July 6th, 70 & July 23rd, 72.
Ne ¼ nw ¼—lots 1, 2, 4,	31	“	“	139.27	D. S. 324, June 6th, 70 & June 25th, 72, P. C. 431, Feb. 2nd, 96.

863

5th Mer.

PARTS OF SECTIONS.	S.	T.	R.	AREA.	REMARKS.
		N.	W.		
Lot 3	31	137	43	25.90	D. S. 324, June 6th, 70 & June 25th, 72. Hd. 5291, May 11th, 81. F. C. 4498, Feb. 9th, 88.
Nw ¼ sw ¼—sw ¼ nw ¼	33	"	"	80	D. S. 386, Apr. 14th, 70 & June 1st, 72. Hd. 722, Dec. 4th, 76. F. C. 1483, July 12th, 83.
N ½ ne ¼	"	"	"	80	D. S. 311, Nov. 4th, 69 & June 25th, 72. Hd. 978, Dec. 20th, 77. F. C. 225, Dec. 20th, 77.
S ½ ne ¼	"	"	"	80	D. S. 215, Apr. 15th, 70 & June 22nd, 72. Hd. 709, Oct. 31st, 76. F. C. 1065, May 29th, 82.
S ½ ne ¼	19	138	43	80	D. S. 22, June 12th, 70 & June 18th, 72. Hd. 952, Dec. 4th, 77. F. C. 213, Dec. 4th, 77.
Nw ¼	"	"	"	156.60	D. S. 591, June 9th, 70 & Aug. 26th, 72. Hd. 4508, Oct. 29th, 80. F. C. 214, Nov. 12th, 84.
Sw ¼ nw ¼—lots 1, 2, 3	25	"	"	130.45	D. S. 135, June 8th, 70 & June 19th, 72. Hd. 725, Dec. 14th, 76. F. C. 945, Nov. 14th, 81.
Lots 4 & 5 n ½ se ¼	"	"	"	150.70	D. S. 27, June 8th, 70 & June 18th, 72. P. C. 434, Mch. 1st, 76.
Sw ¼ se ¼	"	"	"	40	D. S. 123, May 17th, 70 & June 19th, 72. A. C. Scrip 519 Va. R. & R. 17, July 23rd, 72.
N ½ ne ¼, lots 1, 2, 3.	27	"	"	168.67	D. S. 15, June 20th, 70 & June 18th, 72. Hd. 1416, June 10th, 78. F. C. 1437, June 23rd, 83.
N ½ nw ¼	"	"	"	80	D. S. 548, June 12th, 70 & Aug. 7th, 72 P. C. 437, Mch. 9th, 76.
864					
Se ¼ ne ¼	33	138	43	40	D. S. 26, June 13th, 70 & June 18th, 72. Hd. 1417, June 10th, 78. F. C. 1311, Apr. 26th, 83.
E ½ nw ¼—lots 1, 2, 3	7	139	43	179.43	D. S. 950, June 25th, 70 & July 12th, 72. P. C. 69, Aug. 13th, 72.
Lots 2 & 3	17	"	"	23.65	D. S. 949, June 23rd, 70 & Jany. 12th, 72. Hd. 167, Dec. 10th, 72. F. C. 585, Aug. 4th, 79.
Ne ¼ ne ¼—lots 1 & 2	21	"	"	98.85	D. S. 997, July 2nd, 70 & Jany. 19th, 72. Hd. 943, Nov. 24th, 77. F. C. 910, July 21st, 81.
Lot 6	23	"	"	36.25	D. S. 996, Jany. 12th, 70, Jany. 19th, 72. Hd. 468, June 10th, 74. F. C. 147, June 9th, 76.
Nw ¼ sw ¼	"	"	"	40	D. S. 996, Jany. 12th, 70 & Jany. 19th, 72.
Lots 2 & 3	27	"	"	77.35	D. S. 990, May 21st, 70 & Jany. 19th, 72. P. C. 262, May 31st, 73.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼ nw ¼—nw ¼ ne ¼ Lot 4	29	"	"	123.05	D. S. 1033, July 8th, 70 & Jany. 29th, 72—Hd. 384 Nov. 13th, 73. F. C. 444 Nov. 13th, 78.
Lots 1, 2, 8,	35	"	"	96.90	D. S. 992, May 4th, 70 & Jany. 19th, 72—P. C. 140 Dec. 11th, 72.
Sw ¼ se ¼ lot 6	1	139	44	79.25	D. S. 44, Aug. 12th, 70 & June 18th, 72. Hd. 152, Nov. 8th, 72. F. C. 576, July 29th, 79.
Lot 3	11	"	"	26.15	D. S. 104 June 17th, 70 & June 18th, 72. Hd. 3422 Dec. 11th, 79. F. C. 695, Dec. 22nd, 79.
N ½ ne ¼	27	"	"	80	D. S. 428 Aug. 20th, 70 & July 8th, 72. P. C. 395, July 5th, 75.
Lots 1 & 4	1	140	44	96.32	D. S. 497, July 22nd, 70 & July 22nd, 72. P. C. 501, Dec. 30th, 76.
865					
W ½ nw ¼	11	140	44	80	D. S. 186, June 28th, 70 & June 20th, 72.
Sw ¼	"	"	"	160	D. S. 16, June 28th, 70 & June 18th, 72, Hd. 1232, Apr. 26th, 78, F. C. 280, Apr. 26th, 78.
Lot 1—e ½ nw ¼ ne ¼ sw ¼	31	"	"	158.28	D. S. Jany. 17th, 70 & June 18th, 72.
Ne ¼ & nw ¼	1	136	48	306	P. C. 1279, May 23rd, 71.
Sw ¼ & se ¼	"	"	"	320	P. C. 1150, Dec. 20th, 70.
All	3	"	"	619.72	P. C. 1148, Dec. 20th, 70.
Ne ¼	5	"	"	151.40	M. B. L. W. 39087, R. & R. 2049, Oct. 12th, 70.
Nw ¼	"	"	"	147.80	M. B. L. W. 78019 R. & R. 2048, Oct. 12th, 70.
Sw ¼ & se ¼	"	"	"	320	State selection, Jany. 28th, 68, Appd. May 8th, 69.
E ½ ne ¼	7	"	"	80	M. B. L. W. 109665 R. & R. 129, July 23rd, 70.
Lots 2, 3, 4, 5 .	"	"	"	150.02	Hd. 123, May 10th, 69, Canceled, Dec. 6th, 70, Hd. 1095, Dec. 17th, 70. Com. to A. C. Scrip 1447, Ala. R. & R. 494, Oct. 1st, 72.
Se ¼ se ¼—lot 6	"	"	"	69	Hd. 354, Aug. 11th, 69 C. C. 1083, Nov. 23rd, 70.
Ne ¼ se ¼	"	"	"	40	P. C. 930, July 23rd, 70.
Lot 1	"	"	"	19.68	Hd. 26, Feb. 22nd, 69, F. C. 1123, Nov. 8th, 75.
Ne ¼ se ¼	9	"	"	320	P. C. 843, June 24th, 70.
Nw ¼ sw ¼	"	"	"	320	P. C. 869, July 2nd, 70.
All	11	"	"	640	P. C. 1147, Dec. 20th, 70.
Ne ¼	13	"	"	160	M. B. L. W. 110636, R. & R. 4[illegible]9, Dec. 22nd, 70.
Nw ¼ & sw ¼	13	136	48	320	State selection, Jany. 28th, 68. Appd. May 8th, 69.

866

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Se ¼	13	136	48	160	M. B. L. W. 110628 R. & R. 420, Dec. 22nd, 70.
Ne ¼ & nw ¼	15	"	"	320	P. C. 845. June 24th, 70.
		N.	W.		
Sw ¼ & se ¼	"	"	"	320	State selection, Jany. 28th, 68. Appd. May 8th, 69.
Ne ¼	17	"	"	160	A. C. Scrip 160 N. C. R. & R. 85, Dec. 9th, 69.
N ½ nw ¼	"	"	"	80	P. C. 778, June 6th, 70.
Lot 1	"	"	"	28.90	P. C. 182. Aug. 14th, 69.
Lot 2, 3, 4, 5	"	"	"	149.80	P. C. 174, Aug. 5th, 69.
Se ¼	"	"	"	160	A. C. Scrip 1259 Tenn. R. & R. 16, Aug. 30th, 69.
N ½ ne ¼	21	"	"	80	M. B. L. W. 39806, July 28th, 70.
N ½ nw ¼	"	"	"	80	State selection, Jany. 28th, 68. Appd. May 8th, 69.
N ½ ne ¼	23	"	"	80	M. B. L. W. 110601 R. & R. 412, Dec. 22nd, 70.
N ½ nw ¼	"	"	"	80	P. C. 832. June 22nd, 70.
N ½ ne ¼	3	137	48	76.47	M. B. L. W. 97951 R. & R. 1666, July 25th, 70.
S ½ ne ¼	"	"	"	80	M. B. L. W. 98575 R. & R. 167, July 25th, 70.
Nw ¼	"	"	"	152.56	School selection. Apr. 2nd, 70.
E ½ se ¼	"	"	"	80	M. B. L. W. 95306 R. & R. 171, July 25th, 70.
W ½ se ¼	"	"	"	80	M. B. L. W. 33358. R. & R. 170, July 25th, 70.
E ½ sw ¼	"	"	"	80	M. B. L. W. 157833 R. & R. 169, July 25th, 70.
W ½ sw ¼	"	"	"	80	M. B. L. W. 94861 R. & R. 168. July 25th, 70.
Ne ¼ ne ¼	5	"	"	34.05	M B. L. W. 99139 R. & R. 98, July 22nd, 70.
S ½ ne ¼	"	"	"	80	M. B. L. W. 96672 R. & R. 99, July 22nd, 70.
867					
S ½ nw ¼	5	137	48	80	P. C. 783, June 6th. 70.
N ½ nw ¼—nw ¼ ne ¼	"	"	"	96.03	M. B. L. W. 94602 1/2 R. & R. 97, July 22nd, 70.
Se ¼	"	"	"	160	A. C. Scrip 2956 Penn. R. & R. 63, Oct. 21st, 69.
Sw ¼	"	"	"	160	A. C. Scrip 2955 Penn. R. & R. 62, Oct. 21st, 69.
Lot 1	7	"	"	52.60	P. C. 775. June 6th, 70.
Lots 2, 3, 4—se ¼ se ¼	"	"	"	163.30	Hd. 435, Oct. 11th, 69. F. C. 141, May 8th, 76.
Ne ¼	9	"	"	160	P. C. 676, May 3rd, 70.
Nw ¼	"	"	"	160	P. C. 674. May 3rd. 70.
Se ¼	"	"	"	160	M. B. L. W. 109843 R. & R. 83, July 1st, 70.
Sw ¼	"	"	"	160	P. C. 670. May 3rd. 70.
Ne ¼ & se ¼	11	"	"	320	P. C. 1156, Dec. 20th, 70.
Nw ¼ & sw ¼	"	"	"	320	State selection, Jany. 28th, 68. Appd. May 8th, 69.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
W ½ se ¼—e ½ sw ¼	13	"	"	160	State selection, Aug. 28th, 68. Appd. May 6th, 69.
Nw ¼ & sw ¼	"	"	"	320	P. C. 1152, Dec. 20th, 70.
Ne ¼	15	"	"	160	M. B. L. W. 110027 R. & R. 255, Oct. 29th, 70.
Nw ¼	"	"	"	160	M. B. L. W. 73064 R. & R. 257, Oct. 29th, 70.
Se ¼	"	"	"	160	M. B. L. W. 110620 R. & R. 259, Oct. 29th, 70.
Sw ¼	"	"	"	160	M. B. L. W. 110679 R. & R. 258, Oct. 29th, 70.
Ne ¼	17	"	"	160	A. C. Scrip 290, Ind. R. & R. 115, Dec. 30th, 69.
Nw ¼ nw ¼	"	"	"	40	Sld. 4309, Oct. 13th, 69, P. C. 140, May 6th, 70.
S ½ nw ¼—ne ¼ nw ¼	"	"	"	120	M. B. L. W. 94001 R. & R. 101, July 22nd, 70.
8658					
Se ¼	17	137	40	160	M. B. L. W. 97042 R. & R. 178, July 25th, 70.
Sw ¼	"	"	"	160	A. C. Scrip 2050, R. & R. 66, Oct. 22nd, 69.
Ne ¼	19	"	"	160	A. C. Scrip 5512, N. Y. R. & R. 27, Sept. 29th, 69.
Ne ¼ se ¼	"	"	"	40	P. C. 762, June 6th, 70.
S ½ se ¼ lot 4	"	"	"	127.40	P. C. 774, June 6th, 70.
Lots 1, 2, 3,—nw ¼ se ¼	"	"	"	147.30	P. C. 286, Sept. 29th, 69.
Nw ¼	21	"	"	160	M. B. L. W. 97965 R. & R. 161, July 27th, 70.
Ne ¼ & se ¼	"	"	"	320	P. C. 475, May 13th, 70.
Sw ¼	"	"	"	160	M. B. L. W. 91000 R. & R. 105, May 25th, 70.
Ne ¼ & nw ¼	23	"	"	320	P. C. 1152, Dec. 20th, 70.
Sw ¼ & se ¼	"	"	"	320	State selection, Aug. 28th, 68. Appd. May 6th, 69.
Ne ¼	25	"	"	160	M. B. L. W. 110729 R. & R. 426, Dec. 22nd, 70.
Nw ¼	"	"	"	160	M. B. L. W. 110620 R. & R. 427, Dec. 22nd, 70.
Se ¼	"	"	"	160	M. B. L. W. 110601 R. & R. 428, Dec. 22nd, 70.
Sw ¼	"	"	"	160	M. B. L. W. 110610 R. & R. 429, Jany. 2nd, 71.
Ne ¼	27	"	"	160	M. B. L. W. 109189 R. & R. 158, July 25th, 70.
Nw ¼ & sw ¼	"	"	"	320	P. C. 473, May 3rd, 70.
Se ¼	"	"	"	160	M. B. L. W. 90127 R. & R. 159, July 25th, 70.
Ne ¼	29	"	"	160	A. C. Scrip 292, Ind. R. & R. 112, Dec. 30th, 69.
Nw ¼	"	"	"	160	A. C. Scrip 294 Ind. R. & R. 113, Dec. 30th, 69.
Se ¼	"	"	"	160	A. C. Scrip 295 Ind. R. & R. 114, Dec. 30th, 69.

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5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Se ¼	"	"	"	160	M. B. L. W. 80044 R. & R. 4, July 23rd, 70.
Sw ¼	"	"	"	160	P. C. 836, June 22nd, 70.
Se ¼ ne ¼—E ½ se ¼	27	"	"	120	M. B. L. W. 89221, July 23rd, 70. R. & R. 141.
Nw ¼ nw ¼	27	"	"	40	M. B. L. W. 48694 R. & R. 147, July 23rd, 70.
W ½ se ¼—sw ¼ ne ¼	27	"	"	120	M. B. L. W. 95804 R. & R. 143, July 23rd, 70.
E ½ sw ¼—se ¼ nw ¼	"	"	"	120	M. B. L. W. 34540 R. & R. 145, July 23rd, 70.
W ½ sw ¼—sw ¼ nw ¼	"	"	"	120	M. B. L. W. 36146 R. & R. 148, July 23rd, 70.
Ne ¼	29	"	"	160	A. C. Scrip 2964 Penn. R. & R. 71, Oct. 21st, 69.
E ½ nw ¼	"	"	"	80	M. B. L. W. 88384 R. & R. 95, July 22nd, 70.
Nw ¼ nw ¼	"	"	"	40	Hd. 1383, May 10th, 71 F. C. 171, May 18th, 77.
871					
Se ¼	29	138	48	160	A. C. Scrip 279 Del. R. & R. 116, Dec. 30th, 69.
E ½ sw ¼—nw ¼ sw ¼ sw ¼ nw ¼	"	"	"	160	D. S. 741, June 11th, 70. Canceled Dec. 10th, 70. P. C. 217, Dec. 18th, 77. Canceled Aug. 13th, 79. P. C. 1370, Sept. 9th, 79. F. C. 103, July 6th, 91. D. S. 1439, Feb. 18th, & May 17th, 76.
Sw ¼ sw ¼	"	"	"	40	P. C. 808, June 18th, 70.
Lot 1	31	"	"	12.66	P. C. 808, June 18th, 70.
Lots 2 & 3	"	"	"	74.25	Hd. 143, May 13th, 69. F. C. 139, May 8th, 76.
Ne ¼	33	"	"	160	M. B. L. W. 98646 R. & R. 102, July 22nd, 70.
Nw ¼	"	"	"	160	A. C. Scrip 273 Del. R. & R. 122 Dec. 30th, 69.
Se ¼	"	"	"	160	M. B. L. W. 98625 R. & R. 103, July 22nd, 70.
Sw ¼	"	"	"	160	A. C. Scrip 272 Del. R. & R. 223, Dec. 30th, 69.
S ½ sw ¼—sw ¼ se ¼	35	"	"	120	M. B. L. W. 109425 R. & R. 132, July 23rd, 70.
Lot 3	19	129	48	35.95	Hd. 408, Sept. 27th, 69. F. C. 42, Nov. 10th, 74.
Lot 4	"	"	"	6.03	Hd. 409, Sept. 27th, 69. F. C. 41, Nov. 10th, 74.
Nw ¼ nw ¼	29	"	"	40	Hd. 409, Sept. 27th, 69. F. C. 41, Nov. 10th, 74.
Sw ¼ nw ¼	"	"	"	40	M. B. L. W. 98592 R. & R 106, July 23rd, 70.
W ½ sw ¼	"	"	"	80	A. C. Scrip 2965 Pen. R. & R. 72, Oct. 21st, 69.
Ne ¼	31	"	"	160	A. C. Scrip 2966 Penn. R. & R. 73, Oct. 21st, 69.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Nw ¼	"	"	"	153.60	A. C. Scrip 271 Del. R. & R. 124, Dec. 30th, 69.
Se ¼	"	"	"	160	A. C. Scrip 2967 Penn. R. & R. 74, Oct. 21st, 69.

872

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
E ½ sw ¼—lots 1 & 2	31	139	48	132.56	P. C. 525, Mch. 8th, 70.
Lot 3	1	136	49	46.35	D. S. 103, Aug. 11th & 11th, 69. P. C. 994, Aug. 17th, 70.
Lot 1	1	138	49	6.74	P. C. 555, Mch. 25th, 70.
Lot 1	25	139	49	3.64	P. C. 334, Dec. 31st, 69.
S ½ ne ¼—s ½ nw ¼	1	140	49	160	M. B. L. W. 109730 R. & R. 239, Sept. 2nd, 70.
Lots 1, 2, 3, 4—ne ¼ sw ¼	"	"	"	170.10	M. B. L. W. 109872 R. & R. 130, July 23rd, 70.
Lot 1	13	"	"	29.20	P. C. 450, Jany. 19th, 70.
Lots 1 & 2	25	141	49	46.90	P. C. 185, Aug. 14th, 69.
Lots 5 & 6	"	"	"	91.80	P. C. 610, Apr. 13th, 70.

(List 11) 5th Mer.

20 mile limits N. P. conflict with 10 mile limits St. Vin. Ext'n St. P. & P.—Definite location from Thomson's Junction to the Red River of the North—Nov. 20/71.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Lot 3—n ½ sw ¼ sw ¼ sw ¼	1	136	44	158.75	D. S. July 11th 70 & Jany. 11th, 71. P. C. 1749, Dec. 15th, 75.
W ½ nw ¼—w ½ sw ¼	3	"	"	158.78	D. C. 505, July 25th, 70 & Jany. 11th, 71. A. C. Scrip 717, S. C. R. & R. 327, Mch. 21st, 71.
W ½ se ¼—e ½ sw ¼	"	"	"	160	D. S. 486, Apr. 12th, 70 & Jany. 5th, 71.
Lot 5	"	"	"	33.75	D. S. 487, Apr. 1st 70 & Jany. 2nd, 71. P. C. 1754 Dec. 22nd, 75.
Lots 1, 2, 5, 6, 7	7	"	"	152.16	D. S. 415, July 7th, 70 & Dec. 12th, 70. Hd. 2046, Mch. 2nd, 72. F. C. 2481, Aug. 27th, 78.

873

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
W ½ ne ¼ se ¼ ne ¼ se ¼ nw ¼	9	136	44	160	D. S. 412, July 5 & Dec. 12th, 70. Hd. 14914, Oct. 7th. F. C. Nov. 25th, 90.
S ½ se ¼	"	"	"	80	D. S. 408, June 10 & Dec. 10th 90. A. C. Scrip 583 Texas R. & R. 420, Nov. 9th, 71.
Ne ¼ ne ¼	"	"	"	40	D. S. 450, May 1st, 70 & Jany. 2nd, 71.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Lots 4, 5, 7, 10	11	"	"	117.25	D. S. 443, Jany. 5th & Dec. 16th, 70. Hd. 3350, May 19th, 77. F. C. 2506, Oct. 5th, 78.
Lots 1 & 2	"	"	"	65.65	D. S. 445, June 1 & Dec. 16th, 70. A. C. Scrip 21 La. R. & R. 412, Sept. 14th, 71.
Lot 8	"	"	"	3.75	D. S. 404, Aug. 25th & Dec. 10th, 70. A. C. Scrip 780 S. C. R. & R. 374, May 30th, 71.
Lot 9	"	"	"	35.25	D. S. Apr. 1st, 70 & J. Jany. 2nd, 71. P. C. 1754, Dec. 22nd, 75.
W ½ ne ¼—se ¼ ne ¼ ne ¼ se ¼	27	137	44	160	D. S. 295, June 20th, 70 & June 24th, 72. Hd. 704, Oct. 27th, 76. F. C. 1087, June 23rd, 82.
N ½ sw ¼—nw ¼ se ¼ se ¼ nw ¼	"	"	"	160	D. S. 256. May 15th, 70 & June 24th, 72. Hd. 699, Oct. 17th, 76. F. C. 880, June 3rd, 81.
S ½ sw ¼	35	"	"	80	D. S. ——— June 1st, 70 & June 24th, 72. P. C. 465, May 1st, 76.
Ne ¼	5	136	45	154.50	Hd. 1610, June 26th, 71. Canceled Oct. 26th, 78. F. C. 1521, June 18th, 84. F. C. 263, July 8th, 97.
Se ¼	"	"	"	160	Hd. 1612, June 26th, 71. Canceled Oct. 26th, 78. Hd. 8123 Dec. 21st, 83. F. C. 6939, Nov. 6th, 89.
874					
Ne ¼	9	136	45	160	D. S. 799, July 3 & 6, 71. Hd. 15141, May 7th 91. F. C. 7750, Jany. 7th 92.
Se ¼	"	"	"	160	Hd. 1483, June 8th 71. Canceled Mch. 30th, 78. T. C. 1401, Apr. 12th, 83. F. C. 141, July 23rd 92.
E ½ nw ¼—e ½ sw ¼	"	"	"	160	D. S. 800, July 3 & 6th, 71. D. S. 801, July 6 & 7, 71. D. S. 6104, May 2nd, 83 & May 9th, 91. P. C. 18851, Nov. 10th, 91.
W ½ nw ¼—w ½ sw ¼	"	"	"	160	D. S. 800, July 3 & 6th, 71. D. S. 801, July 3 & 6th, 71. Hd. 19140, Mch. 30th 97.
Ne ¼	17	"	"	160	D. S. 847, July 6th & Aug. 15th, 71. Hd. 17963, Nov. 1st, 95.
Ne ¼ & nw ¼	1	139	47	318.59	P. C. 574, Apr. 7th, 70.
Sw ¼ & se ¼	"	"	"	320	P. C. 575, Apr. 7th, 70.
Ne ¼ & nw ¼	5	"	"	314.21	P. C. 593, Apr. 9th 70.
Sw ¼ & se ¼	"	"	"	320	State selection Jany. 28th, 68. Appd. May 8th, 69.

		5th Mer.			
PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼	9	"	"	160	A. C. Scrip 6061 N. Y. R. & R. 226, Apr. 1st 70.
Nw ¼	'	"	"	160	A. C. Scrip 6060 N. Y. R. & R. 227. Apr. 1st, 70.
Se ¼	"	"	"	160	P. C. 644, Apr. 19th, 70.
Sw ¼	"	"	"	160	P. C. 645, Apr. 19th, 70.
Sw ¼ & se ¼	13	"	"	320	State selection Jany. 28th, 68. Appd. May 8th 69.
Ne ¼ & se ¼	17	"	"	320	State selection Jany. 8 28th, 68. Appd. May 8th 69.
Ne ¼	21	"	"	160	A. C. Scrip 1754 Ills. R. & R. 206, Mch. 8th 70.
Nw ¼	"	"	"	160	A. C. Scrip 71 Del. R. & R. 207. Mch. 8th 70.
875					
Se ¼	21	139	47	160	A. C. Scrip 75 Del. R. & R. 209, Mch. 8th, 70.
Sw ¼	"	"	"	160	A. C. Scrip 74 Del. R. & R. 208, Mch. 8th, 70.
Ne ¼	33	"	"	160	A. C. Scrip 609 N. Y. R. & R. 228, Apr. 1st, 70.
Nw ¼	"	"	"	160	A. C. Scrip 6092 N. Y. R. & R. 229, Apr. 1st, 70.
Se ¼	"	"	"	160	A. C. Scrip N. Y. 6095 R. & R. 231, Apr. 1st, 70.
Sw ¼	"	"	"	160	A. C. Scrip 6094 N. Y. R. & R. 230, Apr. 1st, 70.
E ½ ne ¼	29	140	47	80	D. S. 898, July 9th, 70 & Oct. 9th, 71. P. C. 3034, Feb. 2nd, 74.
N ½ ne ¼	33	"	"	80	D. S. 880, July 9th 70 & Sept. 20th, 71. P. C. 373, Nov. 10th, 74.
All	1	137	48	641.89	P. C. 1277, May 23rd 71.
E ½ ne ¼—e ½ se ¼	13	"	"	160	State selection, Jany. 28th, 68. Appd. May 8th, 69.
Ne ¼ & nw ¼	1	138	48	14.96	State selection Jany. 2nd, 71. Appd. May 13th, 72.
Se ¼	"	"	"	160	M. B. L. W. 107609 R. & R. 279, Nov. 29th, 70.
Sw ¼	"	"	"	160	M. B. L. W. 110593 R. & R. 280, Nov. 29th, 70.
Ne ¼ & nw ¼	3	138	48	319.71	P. C. 1114, Dec. 20th, 70.
Nw ¼ & se ¼	"	"	"	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
E ½ ne ¼	5	"	"	84.12	A. C. Scrip 274 Del. R. & R. 121, Dec. 30th, 69.
E ½ se ¼	"	"	"	80	A. C. Scrip 276 Del. R. & R. 119, Dec. 30th, 69.
876					
Ne ¼	9	138	48	160	M. B. L. W. 110133 R. & R. 291, Nov. 29th, 70.
N ½ nw ¼	"	"	"	80	M. B. L. W. 110146 R. & R. 293, Nov. 29th, 70.
Se ¼	"	"	"	160	M. B. L. W. 110125 R. & R. 292, Nov. 29th, 70.
Ne ¼	11	"	"	160	M. B. L. W. 110520 R. & R. 285, Nov. 29th, 70.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Nw ¼	“	“	“	160	M. B. L. W. 105519 R. & R. 286. Nov. 29th, 70.
Sw ¼ & se ¼	“	“	“	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
Ne ¼ & se ¼	13	“	“	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
Nw ¼	“	“	“	160	M. B. L. W. 110244 R. & R. 297, Nov. 29th, 70.
Sw ¼	“	“	“	160	M. B. L. W. 110546 R. & R. 298, Nov. 29th, 70.
Ne ¼	15	“	“	160	M. B. L. W. 110263 R. & R. 303, Nov. 29th, 70.
Nw ¼	“	“	“	160	M. B. L. W. 110270 R. & R. 305, Nov. 29th, 70.
Se ¼	“	“	“	160	M. B. L. W. 110121 R. & R. 304, Nov. 29th, 70.
Nw ¼ sw ¼—e ½ sw ¼	“	“	“	120	M. B. L. W. 110391 R. & R. 306, Nov. 29th, 70.
Ne ¼	23	“	“	160	M. B. L. W. 98612 R. & R. 150, July 23rd, 70.
Nw ¼	“	“	“	160	M. B. L. W. 198624 R. & R. 149, July 23rd, 70.
N ½ se ¼—sw ¼ se ¼	“	“	“	120	M. B. L. W. 96701 R. & R. 139, July 23rd, 70.
Se ¼ se ¼	“	“	“	40	M. B. L. W. 36467 R. & R. 137, July 23rd, 70.
Sw ¼ sw ¼	“	“	“	40	M. B. L. W. 41700 R. & R. 138, July 23rd, 70.
E ½ sw ¼—nw ¼ sw ¼	“	“	“	120	M. B. L. W. 22645 R. & R. 140, July 23rd, 70.
877					
Ne ¼ & nw ¼	25	138	47	320	State selection Jany. 2nd, 71. Appd. May 13th, 72.
Sw ¼ & se ¼	“	“	“	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
Ne ¼ ne ¼	27	“	“	40	M. B. L. W. 35984 R. & R. 142, July 23rd, 70.
Nw ¼ ne ¼	“	“	“	40	M. B. L. W. 87077 R. & R. 144, July 23rd, 70.
Ne ¼ nw ¼	“	“	“	40	M. B. L. W. 20296 R. & R. 146, July 23rd, 70.
Ne ¼ & nw ¼ se ¼ e ½ se ¼	35	“	“	280	State selection Jany. 28th, 68. Appd. May 8th, 69.
Nw ¼	“	“	“	160	M. B. L. W. 158337 R. & R. 131, July 23rd, 70.
N ½ sw ¼	“	“	“	80	M. B. L. W. 109425 R. & R. 132, July 23rd, 70.
Nw ¼ ne ¼—lots 1, 2, 3.	5	139	48	146.67	Hd. 1189, Feb. 3rd 71. F. C. 172, May 18th, 77.
Ne ¼ se ¼ lots 4 & 5	“	“	“	114.82	P. C. 313, Dec. 1st, 69.
Se ¼ se ¼	“	“	“	40	P. C. 326, Dec. 29th, 69.
Lots 6 & 7	“	“	“	54.69	M. B. L. W. 111999 R. & R. 487, July 5th, 71.
Lot 1	7	“	“	.44	P. C. 1352, June 22, 71.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Lot 2	"	"	"	29.64	P. C. 607. Apr. 12th, 70.
Lots 3 & 4	"	"	"	41.01	P. C. 1044, Apr. 26th, 70.
Ne ¼	9	"	"	160	M. B. L. W. 110876 R. & R. 438, Jany. 2nd, 71.
Nw ¼	"	"	"	160	M. B. L. W. 110655 R. & R. 439, Jany. 2nd, 71.
Se ¼	"	"	"	160	M. B. L. W. 110678 R. & R. 440. Jany. 2nd, 71.
Sw ¼	"	"	"	160	M. B. L. W. 110610 R. & R. 441, Jany. 2nd, 71.
Sw ¼ & se ¼	15	"	"	320	State selection Jany. 28th 68. Appd. May 8th, 69.
Ne ¼	17	"	"	160	A. C. Scrip 2969 R. & R. 76, Oct. 21st. 69.
878					
Nw ¼ nw ¼	17	139	48	40	P. C. 1044, Sept. 26th, 70.
Lots 1 & 2—se ¼ nw ¼ ne ¼ sw ¼	"	"	"	135.56	Hd. 454, Oct. 16th, 69. F. C. 40, Nov. 10th, 74.
Ne ¼ nw ¼	"	"	"	40	M. B. L. W. 37061 R. & R. 107. July 23rd, 70.
Se ¼	"	"	"	160	A. C. Scrip 1619. N. C. R. & R. Dec. 9th, 69.
Lot 3	"	"	"	39.80	P. C. 449, Jany. 19th, 70.
Lot 4	"	"	"	16.48	P. C. 257, Oct. 5th, 69.
Lot 1	19	"	"	20.52	P. C. 257, Oct. 5th. 69.
Lot 2	"	"	"	50.94	Hd. 408. Sept. 27, 69. F. C. 42, Nov. 10th, 74.
Ne ¼—nw ¼. se ¼	21	"	"	480	P. C. 1132, Dec. 19th. 70.
Sw ¼	"	"	"	160	A. C. Scrip 497 N. C. R. & R. 189. Feb. 18th, 70.
Ne ¼ nw ¼	23	"	"	320	State selection, Jany. 2nd, 71. Appd. May 31st, 72.
Sw ¼ & se ¼	"	"	"	320	State selection Jany. 28th. 68. Appd. May 8th, 69.
Ne ¼ & se ¼	25	"	"	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
Nw ¼ sw ¼	"	"	"	320	State selection Jany. 2nd. 71. Appd. May 13th, 72.
All	27	"	"	640	P. C. 1132, Dec. 19th, 70.
Ne ¼	29	"	"	160	A. C. Scrip 268 Del. R. & R. 127, Dec. 30th. 69.
E ½ nw ¼	"	"	"	80	M. B. L. W. 98592 R. & R. 106, July 23rd, 70.
Se ¼	"	"	"	160	A. C. Scrip 2968 Penn. R. & [--] 75, Oct. 21st, 69.
E ½ sw ¼	"	"	"	80	A. C. Scrip 2965 Penn. R. & R. 72, Oct. 21st. 69.
All	33	"	"	640	State selection Jany. 2nd, 71. Appd. May 13th, 72.
Ne ¼ & se ¼	35	"	"	320	State selection Jany. 2nd, 71. Appd. May 13th, 72.
879					
Nw ¼ & sw ¼	35	139	48	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
Nw ¼ & sw ¼	1	140	48	304.53	P. C. 643. June 19th, 70.
Se ¼—sw ¼ ne ¼ n ½ ne ¼	"	"	"	266.84	P. C. 564, Apr. 7th. 70.
Ne ¼ & nw ¼	3	"	"	290.23	P. C. 1043, Sept. 26th, 70.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
			5th Mer.		
		N.	W.		
Sw ¼ & se ¼	"	"	"	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
Nw ¼	5	140	48	146.80	P. C. 834, June 22nd, 70.
Se ¼	"	"	"	160	P. C. 591, Apr. 9th, 70.
Sw ¼	"	"	"	160	A. C. Scrip 256 Del. R. & R. 139, Dec. 30th, 69.
E ½ ne ¼—nw ¼ ne ¼	7	"	"	120	M. B. L. W. 63127 R. & R. 238, Sept. 2nd, 70.
E ½ nw ¼—sw ¼ nw ¼ lot 1	"	"	"	144.43	A. C. Scrip 251 Del. R. & R. 144, Dec. 30th, 69.
E ½ se ¼	"	"	"	80	M. B. L. W. 82199 R. & R. [R. & R.] 237, Sept. 2nd, 70.
W ½ sw ¼	"	"	"	68.81	P. C. 1010, Sept. 2nd, 70.
Ne ¼ & se ¼	11	"	"	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
Ne ¼	13	"	"	160	M. B. L. W. 108588 R. & R. 219, Aug. 10th, 70.
Nw ¼	"	"	"	160	M. B. L. W. 108472 R. & R. 220, Aug. 10th, 70.
Se ¼	"	"	"	160	M. B. L. W. 108119 R. & R. 221, Aug. 10th, 70.
Sw ¼	"	"	"	160	M. B. L. W. 108547 R. & R. 222, Aug. 10th, 70.
Ne ¼	17	"	"	160	A. C. Scrip 260 Del. R. & R. 135, Dec. 30th, 69.
Nw ¼	"	"	"	160	A. C. Scrip 259 Del. R. & R. 136, Dec. 30th, 69.
Ne ¼ se ¼—lot 2	"	"	"	78.60	P. C. 442, Jany. 9th, 70.
880					
E ½ sw ¼—nw ¼ se ¼ lot 1	17	140	48	158.80	P. C. 272, Oct. 14th, 69.
Sw ¼ sw ¼	"	"	"	40	P. C. 466, Feb. 4th, 70.
Lots 1, 2, 3—ne ¼ ne ¼	19	"	"	166.65	Hd. 552 Jany. 20th, 70. Canceled Sept. 25th, 76. D. S. 1622, Oct. 2 & Dec. 5th, 76. P. C. 534, Dec. 14th, 77.
Ne ¼	21	"	"	160	A. C. Scrip 262 Del. R. & R. 133, Dec. 30th, 69.
E ½ nw ¼—ne ¼ sw ¼	"	"	"	120	P. C. 522, Mch. 8th, 70.
Lot 1	"	"	"	39.88	P. C. 979, Aug. 5th, 70.
Lot 2	"	"	"	34.50	P. C. 140, July 12th 69.
Se ¼	"	"	"	160	A. C. Scrip 261 Del. R. & R. 134, Dec. 30th, 69.
Se ¼ sw ¼	"	"	"	40	P. C. 520, Mch. 8th, 70.
Lots 3 & 4	"	"	"	55.70	M. B. L. W. 111172 R. & R. 458, May 15th, 71.
Ne ¼ & se ¼	23	"	"	320	State selection Jany. 22nd, 68. Appd. May 8th, 69.
Se ¼ & ne ¼	25	"	"	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
W ½ nw ¼—w ½ sw ¼	27	"	"	160	M. B. L. W. 98489 R. & R. 79, June 1st, 70.
Lot 1	29	"	"	9.15	P. C. 452, Jany. 19th, 70.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W:		
Ne ¼ & nw ¼	33	"	"	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
Se ¼	"	"	"	160	A. C. Scrip 263 Del. R. & R. 132, Dec. 30th, 69.
Sw ¼	"	"	"	160	A. C. Scrip 264, Del. R. & R. 131, Dec. 30th, 69.
Ne ¼	1	141	48	160.65	M. B. L. W. 108775 R. & R. 231, Aug. 10th, 70.
Nw ¼	"	"	"	161.99	M. B. L. W. 108080 R. & R. 232, Aug. 10th, 70.
Se ¼	"	"	"	160	M. B. L. W. 108515 R. & R. 233, Aug. 10th, 70.
881					
Sw L. $	1	141	48	160	M. B. L. W. 108789 R. & R. 234, Aug. 10th, 70.
Ne ¼	3	"	"	161.53	M. B. L. W. 108121 R. & R. 228, Aug. 10th, 70.
Nw ¼	"	"	"	159.80	A. C. Scrip 1623 N. C. R. & R. 155, Jany. 20th, 70.
E ½ se ¼	"	"	"	80	P. C. 669, May 3rd, 70.
W ½ se ¼	"	"	"	80	P. C. 632, Apr. 18th, 70.
E ½ sw ¼	"	"	"	80	P. C. 496, Mch. 18th 70.
W ½ sw ¼	"	"	"	80	P. C. 529, Mch. 9th, 70.
Ne ¼ & nw ¼	5	"	"	313.20	P. C. 514, Mch. 8th, 70.
Sw ¼ & se ¼	"	"	"	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
E ½ ne ¼	7	"	"	80	P. C. 587, Apr. 9th, 70.
E ½ se ¼	"	"	"	80	A. C. Scrip 1688 N. C. R. & R. 149, Dec. 31st, 69.
Ne ¼	9	"	"	160	P. C. 497, Mch. 8th, 70.
Nw ¼	"	"	"	160	P. C. 517, Mch. 8th, 70.
Sw ¼ & se ¼	"	"	"	320	State selection Jany. 28th, 68. Appd. Mch. ["] 69.
Ne ¼	11	"	"	160	P. C. 1040, Sept. 26th, 70.
Nw ¼	"	"	"	160	M. B. L. W. 108622 R. & R. 213, Aug. 20th, 70.
Se ¼	"	"	"	160	M. B. L. W. 108541 R. & R. 215, Aug. 10th, 70.
Sw ¼	"	"	"	160	M. B. L. W. 108513 R. & R. 214, Aug. 10th, 70.
Ne ¼	13	"	"	160	M. B. L. W. 108580 R. & R. 216, Aug. 10th, 70.
E ½ nw ¼—sw ¼ nw ¼	"	"	"	120	M. B. L. W. 108826 R. & R. 236, Aug. 10th, 70.
Se ¼	"	"	"	160	M. B. L. W. 108659 R. & R. 217, Aug. 10th, 70.
882					
Sw ¼	13	141	48	160	M. B. L. W. 108869 R. & R. 218, Aug. 10th, 70.
Ne ¼	15	"	"	160	P. C. 498, Mch. 8th, 70.
Nw ¼	"	"	"	160	P. C. 507, Mch. 8th, 70.
Sw ¼ & se ¼	"	"	"	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
Ne ¼	17	"	"	160	A. C. Scrip 460 N. C. R. & R. 169, Feb. 17th, 70.
Nw ¼	"	"	"	160	A. C. Scrip 1404 N. C. R. & R. 148, Dec. 31st, 69.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Se ¼	“	“	“	160	A. C. Scrip 459 N. C. R. & R. 170, Feb. 17th, 70.
Sw ¼	“	“	“	160	A. C. Scrip 1492 N. C. R. & R. 166, Feb. 12th, 70.
Ne ¼ ne ¼	19	“	“	40	P. C. 588, Apr. 9th, 70.
Sw ¼ nw ¼	“	“	“	38.69	P. C. 862, July 1st, 70.
Se ¼ se ¼	“	“	“	40	P. C. 634, Apr. 19th, 70.
Sw ¼ se ¼—se ¼ sw ¼	“	“	“	80	P. C. 612, Apr. 13th, 70.
Nw ¼ sw ¼	“	“	“	38.63	P. C. 669, May 3rd, 70.
Se ¼ nw ¼—ne ¼ sw ¼	“	“	“	80	P. C. 913, July 21st, 70.
Sw ¼	21	“	“	160	P. C. 738, May 21st, 70.
Nw ¼	“	“	“	160	A. C. Scrip 1456 N. C. R. & R. 173, Feb. 17th, 70.
W ½ se ¼	“	“	“	80	P. C. 995, Aug. 12th, 70.
E ½ se ¼	“	“	“	80	P. C. 735, May 21st, 70.
Ne ¼ & nw ¼	23	“	“	320	P. C. 4516, Mch. 8th, 70.
Se ¼	“	“	“	160	P. C. 509, Mch. 8th, 70.
Sw ¼	“	“	“	160	P. C. 488, Mch. 5th, 70.
All	25	“	“	640	P. C. 501, Mch. 8th, 70.
All	27	“	“	640	P. C. 518, Mch. 8th, 70.
Ne ¼	29	“	“	160	M. B. L. W. 108060 R. & R. 223, Aug. 10th, 70.
883					
Nw ¼ & sw ¼	29	141	48	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
Se ¼	“	“	“	160	P. C. 734, May 21st, 70.
Ne ¼ & se ¼	31	“	“	320	P. C. 637, Apr. 19th, 70.
E ½ sw ¼	“	“	“	80	P. C. 638, Apr. 19th, 70.
Ne ¼	33	“	“	160	M. B. L. W. 108661 R. & R. 243, Sept. 19th, 70.
Nw ¼	“	“	“	160	M. B. L. W. 108773 R. & R. 242, Sept. 19th, 70.
Sw ¼ se ¼	“	“	“	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
All	35	“	“	640	P. C. 508, Mch. 8th, 70.
Sw ¼ & se ¼	1	142	48	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
Ne ¼	5	“	“	156.76	M B. L. W. 108602 R. & R. 209, Aug. 10th, 70.
Nw ¼ & sw ¼	“	“	“	316.25	P. C. 601, Apr. 9th, 70.
Se ¼	“	“	“	160	P. C. 810, June 18th, 70.
Ne ¼	7	“	“	160	A. C. Scrip 1488 N. C. R. & R. 162, Feb. 12th, 70.
Nw ¼	“	“	“	151.60	P. C. 510, Mch. 18th, 70.
Se ¼	“	“	“	160	A. C. Scrip 184 Ohio R. & R. 160, Feb. 3rd, 70.
Sw ¼	“	“	“	151.63	N. B. L. W. 109044, R. & R. 50, Feb. 18th, 70.
Nw ¼	9	“	“	160	P. C. 1037, Sept. 26th, 70.
E ½ sw ¼	“	“	“	80	P. C. 1038, Sept. 26th, 70.
W ½ sw ¼	“	“	“	80	P. C. 742, May 21st, 70.
Nw ¼ & sw ¼	15	“	“	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
Ne ¼ n ½ se ¼	17	“	“	240	P. C. 616, Apr. 13th, 70.
Nw ¼ & sw ¼	“	“	“	320	P. C. 586, Apr. 9th, 70.
S ½ se ¼	“	“	“	80	P. C. 603, Mch. 9th, 70.

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5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼ & nw ¼	21	142	48	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
Sw ¼ & se ¼	"	"	"	320	P. C. 617. Apr. 10th, 70.
Ne ¼	25	"	"	160	M. B. L. W. 108587 R. & R. & R. 128. Feb. 23rd, 70.
Nw ¼	"	"	"	160	M. B. L. W. 108544 R. & R. 127, July 23rd, 70.
Sw ¼ & se ¼	"	"	"	320	State selection Jany. 28th, 68. Appd. May 8th, 69.
Ne ¼ & nw ¼ & se ¼	27	"	"	480	P. C. 618. Apr. 13th, 70.
Ne ¼	29	"	"	160	P. C. 538, Mch. 19th, 70.
Se ¼ se ¼	29	"	"	40	A. C. Scrip 741 S. C. R. & R. 349. May 5th, 71.
N ½ se ¼—sw ¼ se ¼	"	"	"	120	P. C. 512, Mch. 8th, 70.
S ½ se ¼ se ¼ sw ¼	31	"	"	120	P. C. 944. Mch. 19th, 70.
Sw ¼ sw ¼	"	"	"	38.90	P. C. 453. June 19th. 70.
Ne ¼	33	"	"	160	A. C. Scrip 1407 N. C. R. & R. 152. Jany. 20th, 70.
Se ¼	"	"	"	160	A. C. Scrip 1408 N. C. R. & R. 153. Jany. 20th, 70.
Sw ¼	"	"	"	160	A. C. Scrip 1406 R. & R. 154, Jany. 2nd, 70.
S ½ ne ¼	31	143	48	80	P. C. 511, Mch. 8th, 70.
S ½ nw ¼ & sw ¼	"	"	"	234.44	P. C. 512. Mch. 8th, 70.
Se ¼	"	"	"	160	A. C. Scrip 1500 N. C. R. & R. 199. Mch. 5th, 70.
S ½ ne ¼ & se ¼	33	"	"	240	P. C. 1054. Sept. 27th, 70.
S ½ nw ¼ & sw ¼	"	"	"	240	State selection Jany. 28th, 68. Appd. May 8th, 69.
Lots 1 & 2	1	141	49	53.48	Hd. 11. Feb. 1st, 69. F. C. 46. Nov. 23rd. 70.
Ne ¼	1	142	49	160	A. C. Scrip 1409 R. & R. 157, Feb. 2nd, 70.

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5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Lots 1 & 2	1	149	49	61.92	P. C. 471, Feb. 12th, 70.
Lot 3 & ne ¼ se ¼	"	"	"	98.73	P. C. 475, Feb. 18th, 70.
Se ¼ se ¼	"	"	"	40	P. C. 505, Nov. 17th, 69.
Lot 4	"	"	"	38.38	P. C. 306, Nov. 17th, 69.
Lot 1	13	"	"	32	M. B. L. W. 108767 R. & R. 37, Jany. 11th, 70.
Lot 1	25	"	"	25.90	P. C. 2027, Oct. 29th, 64.
Lot 2	"	"	"	21.36	P. C. 2028, Oct. 29th, 64.
				292,157.86	(42,670.42) Total List 11.

Out—See Page 32—	40.00	
" " " 33—	79.30	
" " " 34—	1.24	
	120.54	120.54
		292,037.32 Grand Total.

Out— Withdrawn at date of grant and of definite location—not good basis per 2d Ind. (168 U. S. 608) Pages 3, 4 & 5.....	5,639.58
	286,397.74
Add Supplemental A..........	4,302.07
	290,699.81
Out page 1 & 2 Sup. A........	319.80
	290,380.01
Deduct lands herein but not in Company's list	5,181.17
	285,198.84

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Sup. STATEMENT "A" Office Report.

Lands lying West of Thomson's Junction.

See Adjustment Lists.

No. 3—Area	159.80
No. 9— "	3,816.43
No. 10— "	3.90
No. 11—	321.94
Total......................	4,302.07
Deduct—See Pages 1 & 2................	319.80
	3,982.27

See next page.

887 Northern Pacific R. R. Minnesota,

20 mile limits N. P.

Act July 2, '64, Definite location Nov. 20, '71.

Tracts of land covered by entries made after date of grant, and prior to date of definite location, included in Co.'s list filed May 4, '99—See 99—55144—and which were not included in Office Statement, but upon the grounds stated in the remarks opposite each tract, may be used as the basis for 2nd Indemnity selections.

Acres	4302.07
Out	319.80
	3982.27

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Adjustment Supplemental List 3.

4th Mer.

Northern Pacific R. R. Minnesota—
Act of July 2, '64 Definite location Nov. 20, '71.
West of Thomson's Junction—
20 mile limits N. P. also 10 mile limits L. S. & M.
L. S. & M. Acts May 5, '64 & July 13, '66.

Adjustment List 3 4th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
Ne ¼ se ¼—s ½ se ¼ & lot 5	35	48	17	159.80	Hd. 24 May 16th, 64. F. C. 13. Oct. 29th, 69.

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Adjustment List 9.

5th Mer.

Northern Pacific R. R. Minnesota Act July 2, 64—Definite location Nov. 20, '71.
West of Thomson's Junction.
20 mile limits N. & P. clear.

Adjustment List 9.

5th Mer.

PARTS OF SECTIONS.	Sec.	T.	R.	AREA.	REMARKS.
		N.	W.		
W ½ se ¼ & lot 2	25	128	25	110.68	School selection Mch. 7th, 70. Appd. Sept. 23rd, 74.
Nw ¼ ne ¼—n ½ nw ¼ sw ¼ nw ¼	11	126	26	160	S. H. B. Scrip 484 D. B. & B. 229. Sept. 16th. 64.

5th Mer.

Subdivision and description	Sec.	T.	R.	Acres	Disposition
		N.	W.		
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	"	"	[illegible]	[illegible]
Lot [illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	"	"	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Lots [illegible]	[illegible]	"	"	[illegible]	[illegible]

[illegible]

Adjustment List 9.
Adjustment List 10.
Adjustment List 11.

5th Mer.

Subdivision and description	Sec.	T.	R.	Acres	Disposition
		N.	W.		
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Lot [illegible]	[illegible]	"	"	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	"	"	[illegible]	[illegible]
[illegible]	[illegible]	"	"	[illegible]	[illegible]
[illegible]	[illegible]	"	"	[illegible]	[illegible]

Adjustment List 12.

5th Mer.

Northern Pacific R. R. — Minnesota

Act July 2, '64—Definite location Nov. [illegible], '7[illegible] West of Thomson's Junction.

20 mile limits N. P., also 20 mile limits St. Vin. Ext'n. of St. P. & P.

	Sec.	T.	R.	Acres	Disposition
		N.	W.		
Lot [illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

[illegible]

Northern Pacific R. R. [illegible]

[illegible]

West of [illegible] Junction.

[illegible]

[illegible]

[illegible] EXHIBIT "[illegible]"—Offered in evidence at page [illegible] this Record.

[illegible] EXHIBIT "[illegible]"—Offered in evidence at page [illegible], this record.

[illegible] Circular from the General Land Office, containing Regulations, under the act of July 1, 1898 (30 Stat., 597, 620), to facilitate the adjustment by the Land Department of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company. Approved February [illegible], 1899. Washington: Government Printing Office 1899.

[illegible]

Regulations

Under the Act of July 1, 1898 (30 Stat., 597, 620), to Facilitate the Adjustment by the Land Department of Conflicting Claims to Lands within the Limits of the Grant to the Northern Pacific Railroad Company.

Department of the Interior,
General Land Office,
Washington, D. C., February [illegible], 1899.

The provisions of the act of July 1, 1898 is as follows:

That where, prior to January first, eighteen hundred and ninety-eight, the whole or any part of an odd-numbered sec-

tion, in either the granted or the indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of the grantee or its lawful successor is claimed to have attached by definite location or selection, has been purchased directly from the United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department, and where purchaser, settler, or claimant refuses to transfer his entry as hereinafter provided, the railroad grantee or its successor in interest, upon a proper relinquishment thereof, shall be entitled to select in lieu of the land relinquished an equal quantity of public lands, surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron, or coal, and free from valid adverse claim or not occupied by settlers at the time of such selection, situated with any State or Territory into which such railroad grant extends, and patents shall issue for the land so selected as though it had been originally granted; but all selections of unsurveyed lands shall be of odd-numbered sections, to be identified by the survey when made, and patent therefor shall issue to and in the name of the corporation surrendering the lands before mentioned, and such patents shall not issue until after the survey: Provided, however, That the Secretary of the Interior shall from time to time ascertain and, as soon as conveniently may be done, cause to be prepared and delivered to the said railroad grantee or its successor in interest a list or lists of the several tracts which have been purchased or settled upon or occupied as aforesaid, and are now claimed by said purchasers or occupants, their heirs or assigns, according to the smallest Government subdivision; and all right, title, and interest of the said railroad grantee or its successor in interest in and to any of such tracts, which the said railroad grantee or its successor in interest may relinquish hereunder shall revert to the United States, and such tracts shall be treated, under the laws thereof, in the same
896 manner as if no rights thereto had ever vested in the
said railroad grantee, and all qualified persons who have occupied and may be on said lands as herein provided, or who have purchased said lands in good faith as aforesaid, their heirs and assigns, shall be permitted to prove their titles to said lands according to law, as if said grant had never been made; and upon such relinquishment said Northern Pacific Railroad Company or its lawful successor in interest may proceed to select, in the manner hereinbefore provided, lands in lieu of those relinquished, and patents shall issue therefor: Provided further, That the railroad grantee or its successor in interest shall accept the said list or lists so to

be made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it, but it shall not be bound to relinquish lands sold or contracted by it or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron, or coal: And provided further, That whenever any qualified settler shall in good faith make settlement in pursuance of existing law upon any odd-numbered sections of unsurveyed public lands within the said railroad grant to which the right of such railroad grantee or its successor in interest has attached, then upon proof thereof satisfactory to the Secretary of the Interior, and a due relinquishment of the prior railroad right, other lands may be selected in lieu thereof by said railroad grantee or its successor in interest, as hereinbefore provided, and patents shall issue therefor: And provided further, That nothing herein contained shall be construed as intended or having the effect to recognize the Northern Pacific Railway Company as the lawful successor of the Northern Pacific Railroad Company in the ownership of the lands granted by the United States to the Northern Pacific Railroad Company, under and by virtue of foreclosure proceedings against said Northern Pacific Railroad Company in the courts of the United States, but the legal question whether the said Northern Pacific Railway Company is such lawful successor of the said Northern Pacific Railroad Company, should the question be raised, shall be determined wholly without reference to the provisions of this act, and nothing in this act shall be construed as enlarging the quantity of land which the said Northern Pacific Railroad Company is entitled to under laws heretofore enacted: And provided further, That all qualified settlers, their heirs or assigns, who, prior to January first, eighteen hundred and ninety-eight, purchased or settled upon or claimed in good faith, under color of title or claim of right under any law of the United States or any ruling of the Interior Department, any part of an odd-numbered section in either the granted or indemnity limits of the land grant to the Northern Pacific Railroad Company to which the right of such grantee or its lawful successor is claimed to have attached by definite location or selection, may in lieu thereof transfer their claims to an equal quantity of public lands surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron, or coal, and free from valid adverse claim, or not occupied by a settler at the time of such entry, situated in any State or Territory into which such railroad grant extends, and make proof therefor as in other cases provided; and in making such proof, credit shall be given for the period of their bona fide residence and amount of their improvements upon their respective claims in the said granted or indemnity limits of the land grant to the said Northern Pacific Railroad Company the same as if made upon the tract to which the transfer is made; and before the Secretary of Interior shall cause to be prepared and delivered to said railroad grantee or its successor in interest any list or lists of the several tracts which have been purchased or settled upon or occupied as hereinbefore provided, he shall notify the 897 purchaser, settler, or claimant, his heirs or assigns, claiming against said railroad company, of his right to transfer his entry or claim, as herein provided, and shall give him or them option to take lieu lands for those claimed by him or them or hold his claim and allow the said railroad company to do so under the terms of this act.

A.—Who are the Beneficiaries Under this Act? From Whom May Relinquishments be Received, and by Whom May the Lieu Selections be Made?

1. The act designates a class of beneficiaries whose status is that of claimants adverse to the Northern Pacific Railroad Company, or its successor in interest, and in doing so different words and terms of description are used in different portions of the act; but, considering the act in its entirety, and giving due recognition to each provision therein, this class embraces any qualified person who, prior to January 1, 1898, by settlement, entry, or purchase, initiated in good faith a claim to lands of the description given, "under color of title or claim of right under any law of the United States or any ruling of the Interior Department," and who is still maintaining such claim conformably to such law or ruling.

This class also embraces the heirs of the claimant in all instances where he has died, and his claim or entry or right to perfect title thereunder is one which under the public-land laws descends or passes to his heirs. It further embraces the assigns of the claimant in all instances where, in the absence or an inhibition against so doing, he has sold or transferred his claim or entry, or the right to perfect title thereunder, to one who is not by law disqualified from succeeding to such claim or entry, or the right to perfect title in himself thereunder.

2. The act designates as one beneficiary the Northern Pacific Railroad Company, or its lawful successor in interest, subject, however, to the following proviso:

> * * * And provided further, That nothing herein contained shall be construed as intended or having the effect to recognize the Northern Pacific Railway Company as the lawful successor of the Northern Pacific Railroad Company in the ownership of the lands granted by the United States to the

Northern Pacific Railroad Company under and by virtue of foreclosure proceedings against said Northern Pacific Railroad Company in the courts of the United States; but the legal question whether the said Northern Pacific Railway Company is such lawful successor of the said Northern Pacific Railroad Company, should the question be raised, shall be determined wholly without reference to the provisions of this act. * * *

An examination of a certified copy of the record in the foreclosure proceedings referred to, and a consideration of the opinion of the Attorney-General dated February 6, 1897 (21 Opinions of Attorneys-General, 486), show that the Northern Pacific Railway Company is such lawful successor in interest as to all lands within the limits of the grant, excepting those situated in the State of Minnesota and in the State of North Dakota east of the Missouri river. As to all lands 898 within the limits of the grant situated in the State of Minnesota and in the State of North Dakota east of the Missouri River, the Northern Pacific Railroad Company has no successor in interest, but its property and affairs are now in the hands of receivers, appointed and acting under the authority and direction of certain circuit courts of the United States.

Within the limits of that portion of the grant to which the Northern Pacific Railway Company is thus the lawful successor in interest, relinquishments should be executed, and selections in lieu thereof should be made by said railway company. Within the limits of that portion of the grant situated in the State of Minnesota and in the State of North Dakota east of the Missouri River, relinquishments should be executed by the Northern Pacific Railroad Company, and also by the receivers thereof, and selections in lieu thereof should be made by such receivers on behalf of the railroad company; the receivers, in executing relinquishments and in making lieu selections, to act under proper authorization first obtained from the proper court.

3. In these regulations the claimant adverse to the railroad company or its successor in interest will, for convenience, be spoken of as the individual claimant his claim to the land in contest or controversy will be spoken of as an individual claim; the railroad company or its successor in interest, as the case may be, will be spoken of as the railroad claimant, and its claim to the land in contest or controversy will be spoken of as the railroad claim.

B.—What Lands are Subject to Relinquishment so as to Become the Bases for Lieu Selections?

4. To authorize a lieu selection the relinquishment must be of the whole or some legal subdivision of an odd-numbered section in either the primary or indemnity limits of the land grant to the Northern Pacific Railroad Company, which is the subject of conflicting claims asserted by an individual claimant upon the one part and by the railroad claimant upon the other part.

5. A relinquishment can in no event be made until after the land claimed has become identified by the public surveys.

6. The act makes special provision for instances where, after January 1, 1898, a qualified person in good faith makes settlement, with a view to homestead entry, upon unsurveyed lands within the primary limits of said grant, which upon survey are found to be within an odd-numbered section to which the right of the railroad company has attached by the definite location of its line of road. The purpose of this provision is to afford relief to those who make such settlement before the identification by survey of the lands to which the railroad claimant is entitled.

Such settlement claim must be continued and the right of the settler asserted after survey by an application at the local land office to make homestead entry of the lands settled upon,
accompanied by proof of such settlement, and the con-
899 tinued maintenance of the claim. These claimants are
not accorded the privilege of taking other lands in lieu of those settled upon; but if the proof submitted is deemed satisfactory the railroad claimant will be requested to relinquish the lands embraced in said claims and to take other lands. All the provisions of these regulations are applicable to these lands excepting those pertaining to relinquishments by individual claimants.

7. Since the issuance of patent terminates the jurisdiction of the Land Department over the lands patented, and exhausts its power to examine and decide upon claims to such lands, and since this act manifestly refers to conflicting claims to lands which have not passed beyond the jurisdiction of the Land Department, it follows that its provisions are confined to unpatented lands, and that lands which have been patented are not the subject of relinquishment and can not be made the basis of a lieu selection under this act; but the point to which the opposing claims have been prosecuted, or the extent to which they have been considered by the Land Department, is not material if they be otherwise within the terms of the act, and the lands remain unpatented.

C.—What are the Claims which Come Within the Provisions of this Act?

8. An individual claim adverse to the railroad claim is one which, prior to January 1, 1898, was initiated in good faith by some qualified person, by settlement, entry, or purchase, "under color of title or claim of right under any law of the United States or any ruling of the Interior Department," and which is still maintained conformably to such law or ruling, and is one which, in the absence of the railroad claim, could be perfected into full title. (See also paragraph 6.)

9. The railroad claim is one which arises from the definite location of the line of railroad if the land is within the primary limits of the grant, or which arises from a lieu selection if the land is within the indemnity limits, and is one which, in the absence of all individual claims, would enable the railroad claimant to obtain full title to the land.

10. The purpose of the act is to avoid further strife and contention before the Land Department between the railroad claimant upon the one hand and indvidual claimants upon the other hand, and to that end the act extends alternately to the individual claimant and the railroad claimant an opportunity to acquire other lands of equal area in lieu of those in contest. The privilege of making a lieu selection is not dependent upon success or failure in the contest, but rather upon the existence of a contest or controversy which is intended to be disposed of without subjecting the parties to delay, expense, and inconvenience incident to its further prosecution. The act contains a provision that nothing therein "shall be construed as enlarging the quantity of land which the said Northern Pacific Railroad Company is entitled to under laws heretofore enacted;" but in the light of other provisions in the act in harmony with which this one must be construed, it
900 is obvious that this provision is not intended to re-
strict the operation of the act to those instances in which the railroad claim is ultimately found to be the superior one.

To ascertain that fact would require the prosecution of every contest to a final decision, and would render the act practically inoperative, because, if compelled to litigate its claim to a final decision through the local office, the General Land Office, and before the Secretary of the Interior, it is doubtful whether the railroad claimant would surrender for the benefit of the defeated individual claimant the railroad claim thus established at a cost of much time, expense, and inconvenience. The claim which will support a relinquishment and lieu selection is not described as a lawful one, but as a "right * * * claimed to have attached by definite location or selection," and as a claim initiated in good faith "under color of title or claim of right," etc. Under the act of July 2, 1864 (13 Stat., 365), the railroad company became entitled to all the odd-numbered sections within the primary limits of the grant, or to indemnity for such as were "granted, sold, reserved, occupied by homestead settlers, or preempted, or otherwise disposed of," at the date of the definite location of its line of road.

Thus, the maximum quantity of lands to which the company was entitled is established by ascertaining the area included in odd-numbered sections within the primary limits of the grant as adjusted to the line of definite location. The clause in the act of July 1, 1898, providing against an enlargement of the quantity of lands to which the railroad company was then entitled has reference to the maximum quantity ascertained as aforesaid, and does not restrict the privilege of making selections under that act to those instances where the railroad claimant has an absolute legal right to the particular lands relinquished, a matter which would not be involved in an ascertainment of the quantity of the grant.

D.—What Lands are Subject to Selection in Lieu of Those Relinquished?

11. Selections will be limited to a quantity of land not exceeding that relinquished, but, since all selections must be according to legal subdivisions which generally approximate but do not always embrace the same area, a slight difference in the acreage of the tract relinquished and selected will not be deemed an inequality in quantity.

12. Subject to the limtations named in paragraphs 13 and 14, selections may be made from any public lands within a State into which the Northern Pacific Railroad land grant extends, surveyed or unsurveyed, not mineral or reserved, not valuable for stone, iron, or coal, not subject to valid adverse claim, and not occupied by a settler at the time of such selection; but odd numbered sections within the Bozeman, Helena, and Missoula land districts in the State of Montana, and the Coeur d'Alene land district in the State of Idaho, which are
also within the primary or indemnity limit of said land grant,
can not be selected by or patented to the railroad claim-
901 ant unless they have been finally classified as non-min-
eral under the act of February 26, 1895 (28 Stat., 683).

13. Selections of unsurveyed lands by the railroad claimant are confined to odd-numbered sections or legal subdivisions therein "to be identified by the survey when made," that

is, the selection must be of the whole or some legal subdivision of a designated odd-numbered section, so that the public survey when made will give identity to the land selected.

Selections of unsurveyed lands by an individual claimant must be designated according to the description by which they will be known when surveyed, if that be practicable, or if not practicable, by giving with as much precision as possible the locality of the tract with reference to known landmarks, so as to admit of its being readily identified when the lines of survey come to be extended, and the selection must be made to conform to such survey within thirty days from the date of the receipt at the local land office of the approved plat of the township embracing such lands.

14. Lands selected by an individual claimant in lieu of other lands, the claim to which has not been carried to final entry and certificate or to the submission of final proof entitling him to final entry and certificate, must be in a compact body and be of the character subject to entry under the particular law controlling the claim relinquished, and this applies whether the lands selected are surveyed or unsurveyed. (See paragraph 36.)

E.—Procedure in Obtaining Relinquishments.

15. As soon as may be practicable after the adoption of these regulations, an examination will be made of the contests pending before the Secretary of the Interior, and those appearing to come within the provisions of the act of July 1, 1898, will be returned to the Commissioner of the General Land Office for disposition hereunder, together with all like contests then pending in the General Land Office. From time to time thereafter other contests or controversies appearing to come within the provisions of said act will be disposed of in like manner. Any claimant believing that his or its claim comes within the provisions of said act may request that such claim be disposed of thereunder, and such request will receive due consideration.

16. In speaking of the surrender by the individual claimant of the lands in contest and the taking by him of other lands in lieu thereof, the act describes it as a transfer of his claim or entry; but since the transaction, whether by the individual claimant or by the railroad claimant, is essentially the same, it is for convenience described and spoken of throughout these regulations as a relinquishment of the lands in contest and a selection of other lands in lieu thereof.

17. The option of relinquishing the lands in contest and
selecting other lands in lieu thereof is by law first ex-
902 tended to the individual claimant, and if he elects to
hold the lands which are in contest the railroad claimant
will be called upon to relinquish the same and to select other
lands in lieu thereof. (See paragraphs 29 to 31, inclusive.)

18. Whenever any contest or controversy appears to come within the provisions of said act, the Commissioner of the General Land Office will notify the individual claimant of the option accorded by law to individual claimants and will request him, if still maintaining his claim as herein required, to make proof of such continued maintenance and to exercise his option within sixty days after the time of receiving such notice. (See paragraph 30.) If the claimant elects to relinquish the lands in contest and take other lands in lieu thereof, he must execute a proper relinquishment as hereinafter required (see paragraphs 24 to 26, inclusive), and transmit the same to the Commissioner of the General Land Office, together with notice of his election so to do.

19. In all cases where the individual claim has not passed to final entry and certificate, or to the submission of final proof entitling the claimant to final entry and certificate, a failure to furnish satisfactory proof of the continued maintenance of the claim and to exercise such option within the time named will be deemed an abandonment of the claim, and the land embraced therein will be disposed of accordingly.

20. In all cases where the individual claim has passed to final entry and certificate, or to the submission of final proof entitling the claimant to final entry and certificate, proof of the continued maintenance of the claim is not essential, but a failure to exercie such option within the time named will be deemed an election on the part of the individual claimant to hold the land in contest.

21. The Commissioner of the General Land Office may, in his discretion, extend the time for exercising such option in special cases upon proper cause being shown.

22. An individual claimant may, without formal notice or request, make proof of the continued maintenance of his claim and exercise his option and notify the Commissioner of the General Land Office thereof, in which event the notice and request otherwise required will not be necessary. (See paragraphs 18 and 24 to 26, inclusive.)

23. From time to time, and as soon as conveniently may be done, the Commissioner of the General Land Office shall prepare and submit to the Secretary of the Interior duplicate

lists describing, according to the smallest legal subdivision, the lands to which there are conflicting claims as described in these regulations, and which the individual claimants have elected to hold; and, upon the approval of any such list by the Secretary of the Interior, the Commisioner of the General Land Office will retain one copy thereof in his office and will transmit the other copy thereof to the said railroad claimant, with the request that it relinquish its claims to the lands therein described. Every list will be deemed conclusive against the railroad claimant to the extent that it will be required, within sixty days after receipt thereof, to execute and
deliver to the Secretary of the Interior a proper relin-
903 quishment to the United States of all the lands in said
list, or to make satisfactory showing that those not relinquished have been sold or contracted to be sold, or are used or needed for railroad purposes, or are valuable for stone, iron, or coal. (See paragraphs 24 to 26, inclusive, and 29 to 31, inclusive).

F.—What is a Proper Relinquishment?

24. The relinquishment must be an instrument in writing describing the lands in contest and making appropriate reference to the claim intended to be surrendered, and in terms releasing, quitclaiming, and relinquishing unto the United States of America all the right, title, interest, and claim of the individual or railroad claimant, as the case may be, to such lands. It must be executed, witnessed, and acknowledged conformably to the laws respecting the conveyance of real property in the State where the land is situate.

25. Relinquishments by individuals of claims which have passed to final entry and certificate, or to the submission of final proof entitling the claimant to final entry and certificate, must also be executed by the wife of the claimant, if he have one, in such manner as will effectually bar any dower, homestead, or other interest on her part in or to the lands relinquished.

26. A relinquishment of an individual claim which has passed to final entry and certificate, or to the submission of final proof entitling the claimant to final entry and certificate, or which under existing laws is assignable before that time, and also all relinquishments by the railroad claimant, must be accompanied by proof satisfactorily showing whether the land relinquished has been sold, contracted to be sold, or encumbered. (See paragraphs 1 and 32.)

G.—Effect of Relinquishment—When to Select Other Lands is Complete.

27. Upon the filing with and aceptance by the Commissioner of the General Land Office of a relinquishment by the individual claimant the lands in contest may be patented to the railroad claimant in the same manner as other lands falling within the terms of the grant; and the individual claimant, upon receiving notice of the acceptance of his relinquishment, will be entitled, upon proper application (see paragraph 32), to select other lands, according to the condition and limitations of said act (see paragraph 36).

28. Upon the filing with and acceptance by the Commissioner of the General Land Office of a relinquishment by the railroad claimant the lands so relinquished "shall revert to the United States, and such tracts shall be treated under the laws thereof in the same manner as if no rights thereto had ever vested in the said railroad grantee;" and the individual claimants thereto shall be permitted to perfect their claims or entries and to obtain title thereunder upon compliance with the laws pertaining thereto. In the event that any individual claim on account of which a relinquishment is made by
904 the railroad claimant is not perfected into full title the lands embraced therein will not revert to the railroad claimant, but will be subject to other disposition, according to law. The railroad claimant, upon receiving notice of the acceptance of its relinquishment, will be entitled, upon proper application (see paragraphs 32 to 41, inclusive), to select other lands, according to the conditions and limitations of said act.

H.—Disposition of Contests Involving Lands Sold or Contracted to be Sold by the Railroad Company, used or Needed for Railroad Purposes, or Valuable for Stone, Iron, or Coal.

29. By the terms of the act the railroad claimant is exempted and excused from relinquishing lands which have been sold or contracted to be sold by it, or which are used or needed for railroad purposes, [or] or which are valuable for stone, iron, or coal.

30. Where it satisfactorily appears from the record in any contest that the lands in controversy come within the terms of this exemption, the Commissioner of the General Land Office in calling upon the individual claimant to exercise the privilege accorded to him (see paragraphs 17 and 18) will notify him that the railroad claimant can not be required to relinquish such lands, and that unless he elects to relinquish the same and take other lands in lieu thereof the contest will

proceed to final determination without further regard to said act; and where such exemption is satisfactorily shown after the individual claimant has elected to hold the lands in contest (see paragraph 23), the Commissioner of the General Land Office will notify him thereof and accord him another opportunity, to be exercised within a stated time, to relinquish the lands in contest and take other lands. In the event that this privilege is declined the contest will proceed to final decision in the usual way.

31. The affidavit of two persons having personal knowledge of the facts will be deemed sufficient to prima facie establish that any lands come within this exempted class; but such affidavit should state fully when and to whom the lands were sold or contracted to be sold, and if contracted to be sold the extent to which such contract has been performed, and whether it is still subsisting, the necessity for the present or future use of such lands for railroad purposes, and the extent thereof, or how it has been ascertained that they are valuable for stone, iron, or coal, as the case may be.

I.—Procedure in Selecting Lieu Lands and Perfecting Titles Thereto.

32. Applications to select lieu lands hereunder, whether by an individual claimant or by the railroad claimant, must be presented to the local land office of the district within which the lands selected are situate. The application must particularly state the description and acreage of the lands relinquished, the acceptance by the Commissioner 905 of the General Land Office of the relinquishment, and the description of the lands selected (see paragraph 13), and must be accompanied by proof that the land selected is of the character subject to selection (see paragraphs 11 to 14, inclusive). If the records of the local office do not show to the contrary, the character of the land will be deemed to be prima facie established where the application is supported by the oath of the individual claimant, or of an agent of the railroad claimant, based upon a personal examination of the land.

33. If the application is in proper form and, upon examination of the records in the local office, the lands selected appear to be subject to such selection, the local officers will accept the application, give it an appropriate number, make due notation of the selection upon the records of their office, and transmit the papers to the Commissioner of the General Land Office for his consideration.

34. When the lands selected have been returned as mineral by the surveyor-general, the first subdivision of paragraph 103 of the mining regulations, approved December 15, 1897, shall be applicable thereto; but in view of the proof exacted by paragraph 32 hereof the requirements of paragraph 104 of such mining regulations will be dispensed with as to all selections hereunder of lands not returned as mineral.

35. When any lands, whether surveyed or unsurveyed, have been selected hereunder by an individual claimant or by the railroad claimant, no right thereto can be initiated by settlement or entry while such selection remains of record.

36. Where lands are selected by an individual claimant in lieu of lands the claim to which has not been carried to final entry and certificate, or to the submission of final proof entitling him to final entry and certificate, the claimant will be required to perfect his right to the lands selected by compliance with the law relating to that class of claims, and to submit proof thereof in the usual way, but credit will be given for his bona fide residence, improvements, cultivation, or reclamation, as the case may be, and for any payment of fees or purchase money upon the land relinquished, it being the purpose of the act to give individual claimants the same status with respect to the lieu lands selected by them which they occupied with respect to the lands relinquished.

J.—Time of Issuing Patents to Selected Lands.

37. Unsurveyed lands, whether selected by an individual claimant or by the railroad claimant, will in no event be patented until after survey.

38. Unsurveyed lands selected by the railroad claimant will not be patented until after the expiration of four months from the date of the receipt at the local land office of the approved plat of the township embracing the lands so selected, and surveyed lands selected by the railroad claimant will not
906 be patented until after the expiration of four months from the date of selection.

39. Unsurveyed lands selected by an individual claimant in lieu of lands the claim to which has been regularly carried to final entry and certificate or to the submission of final proof entitling him to final entry and certificate, will not be patented until after the expiration of four months from the date of the receipt at the local land office of the approved plat of the township embracing the lands so selected; and surveyed lands selected by an individual claimant in lieu of lands the claim

to which has reached a like status will not be patented until after the expiration of four months from the date of selection.

40. The purpose of the last two paragraphs is, in all instances where publication and notice will not be had, to give to settlers, if any, upon such lands at the time of the selection thereof, the full period prescribed by law within which to apply at the local land office to make homestead entry of the land, and to afford ample time for the local officers to advise the Commissioner of the General Land Office of any such application before the time arrives for issuing patent under the selection.

41. Selections made by the railroad claimant which are found satisfactory by the Commissioner of the General Land Office will, upon the expiration of the time required to elapse before the issuing of patent (see paragraphs 37 to 40, inclusive), be certified to the Secretary of the Interior, and if approved by him will be patented to the railroad claimant as though originally granted.

K.—Forms to be Used in the Administration of said Act.

42. The election of the individual claimant to hold or relinquish the lands in controversy and the proof of the maintenance of his claim may be made according to the following form:

The State of ———,
County of———, ss.

——— ———, being first duly sworn, upon his oath deposes and testifies as follows:

1. Q. What is your name, age, and post-office address?—A. ———.

2. Q. Are you a native-born citizen of the United States; and if so, in what State or Territory were you born?—A. ———.

3. Q. If you are not a native-born citizen of the United States, have you declared your intention to become a citizen or have you been naturalized? If so, when and where? A. ———.

4. Q. Are you the identical person who has heretofore been claiming (here describe land) under the —— law? If so, how and when was your claim initiated?—A. ———.

5. Q. Do you understand that there are conflicting claims to this land, one of which is your claim and the other of which is the claim of the Northern Pacific Railroad Company or its successor in interest?—A. ———.

6. Q. Do you desire and elect, under the act of Congress approved July 1, 1898 (30 Stat., 597, 620), to hold the land
in controversy and retain your present claim thereto,
907 or do you desire and elect under said act to relinquish
the land in controversy and to transfer your said claim to other lands?—A. ———.

7. Q. State fully and accurately where you resided from time to time since the initiation of your said claim to said land. A. ———.

8. Q. Of whom does your family, if any, consist, and where have they resided from time to time since the initiation of said claim? A. ———.

9. Q. State accurately what you have done in the way of improving, cultivating, or reclaiming this land, giving dates, value of improvements, and amount of expenditure.

A. ———.

10. Q. How much of the time were you upon said land during the year 1897, and what work did you do or have done thereon during that year? A. ———.

11. Q. What personal property did you have on this land on January 1, 1898? A. ———.

12. Q. Have you sold, conveyed, or mortgaged any portion of this land or assigned your claim thereto? If so, state when, to whom, and for what purpose. A. ———.

13. Q. How much other land do you own now? A. ———.

14. Q. Have you ever made a filing upon or an entry of other public lands? If so, give the time, description of the land, name of the land office, and character of the filing or entry. A. ———.

15. Q. To whom can you refer for support and corroboration of the statements made herein? A. ———.

(Sign plainly with full name.) ——— ———.

I hereby certify that the foregoing testimony was fully read to the said ——— ——— before being subscribed by him, and that the same was subscribed and sworn to by him before me this —— day of ———, ——.

——— ———.

Note.—This affidavit may be made before the register or receiver of the local land office, or before any other officer authorized to administer an oath.

If the claimant elects to relinquish the lands in controversy, he must execute the accompanying relinquishment.

43. A relinquishment by an individual claimant may be made substantially according to the following form, and one by the railroad clainant may be modeled therefrom:

Know all men by these presents:

That I, ——— ———, of ——— County, in the State of ———, the identical person who heretofore initiated and is now asserting a claim to the following-described lands, to wit, [describe fully and accurately] under the ——— law, desiring to take advantage of the provision in the act of Congress approved July 1, 1898 (30 Stat., 597, 620), authorizing an adjustment by the Land Department of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company, do hereby release, quitclaim, and relinquish unto the United States of America all my right, title, interest, and claim in and to the lands aforesaid, and I request that this relinquishment be accepted by the Commissioner of the General Land Office in order that, under the provisions of the act of Congress aforesaid, I may select other lands in lieu of those hereby relinquished, and may perfect and obtain title to the lands so selected instead of to the lands hereby relinquished.

I, ——— ———, wife of the said ——— ———, for the purposes aforesaid, do hereby join my said husband in releasing, quitclaiming, and relinquishing unto the United
908 States of America the lands aforesaid, and I do specially waive and relinquish any and all dower, homestead, or other interest in the lands relinquished to which I am now or might hereafter be entitled according to law.

Witness our hands and seals this ——— day of ———, A. D. ———.

——— ——— [Seal.]
——— ——— [Seal.]

Witnessed by:

——— ———.
——— ———.

Note.—This relinquishment must be executed, witnessed, and acknowledged conformably to the laws respecting the conveyance of real property in the State where the lands relinquished are situate, and the officer before whom the acknowledgment is made must make and attach hereto, under his name and official seal, an appropriate certificate of such acknowledgment.

44. The application to select lands in lieu of those relinquished and the affidavit in support thereof may be substantially according to the following forms:

United States Land Office at ———,
(Date:) ———, ———.

No. ———.

I, ——— ———, of the county of ———, in the State of ———, having made relinquishment of my (state character of claim) claim, covering the ——— of section ——, in township ——, range ——, in ——— land district, containing —— acres, heretofore included in the conflicting claims of the Northern Pacific Railroad Company, or its successor in interest, and myself, which relinquishment has been duly accepted by the Commissioner of the General Land Office, do hereby make application to select in lieu of the lands so relinquished the following lands, to-wit: —————, in ——— land district.

My post-office address is ———, ———.

——— ———.

United States Land Office at ———,
(Date:) ———, ——.

We hereby certify that we have carefully considered the foregoing application, and have critically examined the plats and records of this office, so far as they apply to the lands sought to be selected. Finding that the application and proofs fully conform to the statute and regulations thereunder, and that the lands selected appear by the records of this office to be subject to such selection, we have accepted the application and have made due notation thereof upon the records pending the advice of the Commissioner of the General Land Office. $ —— fees paid.

——— ———,
Register.
——— ———,
Receiver.

909 Affidavit to be Made by Individual Claimant in Support of Foregoing Application to Select.

United States Land Office at ———,
(Date:) ———, ——.

No. ——.

I, ——, ——, of —— County in the State of ———, being duly sworn upon my oath, do depose and say that my post-office address is ———, ———; that I am the individual claimant who makes the foregoing application under the act of July 1, 1898 (30 Stat., 597, 620); that I am acquainted with the lands sought to be selected under the foregoing application, and have examined every subdivision thereof; that there is not to my knowledge within the limits of said land any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, or other mineral substance; that there is not within the limits of said land to my knowledge any placer or other valuable mineral deposit or any salines; that no portion of said land is claimed for mining purposes under local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year; that said land is essentially non-mineral land; that it does not to my knowledge contain any valuable stone, iron, or coal; that it is not reserved in any manner, is not subject to any valid claim whatsoever, and is not occupied by any settler. And further affiant sayeth not.

——, ——.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified to me); that I verily believe him to be a creditable person and the person he represents himself to be; and that this affidavit was subscribed and sworn to by him before me at my office at ——, within the —— land district, on this —— day of ——.

——, ——,
——, ——.

Note.—This affidavit may be made before the register or receiver of the local land office or before any other officer authorized to administer an oath.

If the claim relinquished be a desert-land claim, timber-culture claim, or a timber-purchase claim, which has not been carried to final entry and certificate, or to the submission of final proof entitling the claimant to final entry and certificate, the applicant must also make proof of the character of the land selected, as required by the regulations controlling that class of claims.

45. The following form may be used in listing lands to be relinquished by the railroad claimant:

Department of the Interior,
General Land Office,
Washington, D. C., ——, 18- -.

Whereas, an act of Congress, approved July 1, 1898 (30 Stat., 597, 620), makes provision for the relinquishment by the Northern Pacific Railroad Company, or its successor in interest, upon the conditions therein named, of the whole or any part of an odd-numbered section, in either the primary or indemnity limits of the land grant to that company, to which the right of said company, or its lawful successor, is claimed to have attached by definite location, or selection, and which prior to January 1, 1898, has been "purchased directly from the United States or settled upon or claimed in good faith by any qualified settler, under color of title or claim of right under any law of the United States, 910 or any ruling of the Interior Department," of which, if an odd-numbered section in the primary limits, is settled upon after January 1, 1898, and before survey, by a qualified person, in good faith, with a view to homestead entry, and makes provision for the selection by said company, or its successor in interest, or other lands in lieu of those relinquished; and

Whereas, it is further provided in said act that the Secretar of the Interior shall ascertain and from time to time cause to be prepared and delivered to said railroad company, or its successor in interest, a list or lists of the tracts coming within the provisions thereof; and

Whereas, it is further provided by said act that said railroad company, or its successor in interest, shall accept the list or lists so made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it, but "shall not be bound to relinquish lands sold or contracted by it or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron, or coal;" and

Whereas, it is further provided as to all claims, excepting homestead settlements made on unsurveyed lands after January 1, 1898, that "before the Secretary of the Interior shall cause to be prepared and delivered to said railroad grantee, or its successor in interest, any list or lists of the several tracts which have been purchased or settled upon or occupied as hereinbefore provided, he shall notify the purchaser, settler, or claimant, his heirs or assigns, claiming against said railroad company, of his right to transfer his entry or claim, as herein provided, and shall give him or them option to take lieu lands for those claimed by him or them, or hold his claim and allow the said railroad company to do so under the terms of this act;" and

Whereas, upon examination by this office the following tracts of land have been found to be of the character authorized to be relinquished under said act, and the claimants therefor against the railroad company (where entitled to such option) have, upon due notice of their rights under said act, refused to transfer their respective claims to other lands, to wit:

LIST NO. —.

STATE OF ———, ——— LAND DISTRICT.

Parts of sections.	Sec.	Tp.	R.	Adverse claimants.

911 Now, therefore, the said list is hereby submitted to the Secretary of the Interior for his consideration, with the recommendation that directions be given to this office to call upon the Northern Pacific Railroad Company or its successor in interest, as the case may be, to relinquish all of said lands or to satisfactorily show that those not relinquished have been sold or contracted to be sold, or are used or needed for railroad purposes, or are valuable for stone, iron, or coal; and to advise said railroad company or its successor in interest that upon filing the relinquishment requested it will be entitled to select other lands in lieu thereof, as provided in said act.

——— ———,
Commissioner.

Department of the Interior,
——— —, 18—.

Approved:

——— ———,
Secretary of the Interior.

L.—Cases Not Covered by These Regulations.

46. If in the administration of said act cases are found which are not covered by these regulations, such cases will be disposed of according to their respective merits under special

instructions, or supplemental regulations embracing cases of that character will be adopted, as may seem necessary.

BINGER HERMAN, Commissioner.

Approved February 14, 1899.
C. N. BLISS,
Secretary.

913 DEFENDANTS' EXHIBIT "L": Offered in evidence at page 319, this record:

Northern Pacific Railway Company.
Board of Directors,
July 13, 1898.

"Resolved; That the Northern Pacific Railway Company hereby accepts the provisions of the Sundry Civil Appropriation Bill, approved by the President of the United States July 1, 1898, concerning the land grant of the Northern Pacific Railroad Company; and that the Vice-President of this company be, and hereby he is, authorized to communicate to the Secretary of the Interior such acceptance by this Company, of the provisions of the Sundry Civil Appropriation Bill."

I, George H. Earl, Secretary of the Northern Pacific Railway Company hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Directors of said Company at their meeting held on the 13th day of July, 1898.

Witness my hand and the seal of said Company this 21st day of July, 1898.

Company's seal.

2792

GEO. H. EARL, Secretary.

Indorsed: Department of the Interior. Received Jul. 22, 189- L. & R. R. Div. 1898, 7405—1.

914 Northern Pacific Railway Company.

Office of the
Vice-President.

35 Wall Street,
New York.
July 21, 1898.

Sir: I beg to inclose herewith a certified copy of a resolution adopted by the Board of Directors of the Northern Pacific Railway Company, formally accepting on the part of this Company the provision of the Sundry Civil Appropriation Act, approved July 1st, 1898, having reference to the land grant of this Company,

Very respectfully,
DANIEL S. LAMONT,
Vice-President.

The Secretary of the Interior,
Washington, D. C.
(Inclosure.)

Indorsed: U. S. General Land Office. Received Jul 26, 1898. 7405. Department of the Interior. Received Jul 22, 1898. L. & R. R. Div. Daniel S. Lamont, Vice-President No. Pac. Ry. Co. Jul 21/98. Encloses certified copy of resolution adopted by the Board of Directors, No. Pac. Ry. Co., formally accepting on the part of said company, provisions of 2972 Sundry Civil appropriation Act, approved July 1, 1898, having reference to land grant of N. P. Ry. Co. Chief Clerk. Jul 22, 1898. Department of the Interior F. 43/142 I E.

J. I. P. A. M.

Dept. of the Interior. July 23/98. Acknowledged and Respectfully referred to the Com'r Gen'l Land Office. Edward M. Dawson, Chief Clerk.

No answer required.

File with Nor. Pac. R. R. papers Marr.

915 DEFENDANTS' EXHIBIT "M":—Duly certified; offered in evidence at page 319, this Record:

"F" 1897-116901. W. J. M.
R. F. F. Department of the Interior
General Land Office,
Washington, D. C., Oct. 5, 1896.

Address only the
Commissioner of the General Land Office.

The Honorable,
The Secretary of the Interior.

Sir: On June 25, 1896, I transmitted to your office with my recommendation for its approval, Northern Pacific Railroad Company's Washington Clear List No. 43, Walla Walla Land district, covering 880 acres. Attached to said list were the required certificates and the lands selected were certified to be within the indemnity limits of the company's grant free foom adverse claims, non-mineral in character and had been selected in lieu of an equal acreage of other lands lost to said company within its granted limits.

Your office has informally returned this list to me with the suggestion that part of the lands designated in the list as being lost to the grant appear to have been within the granted limits of the main line under the joint resolution of May 31, 1870, whilst the lands selected were within the limits of the branch line under the act of July 2, 1864, and I am asked to return the list to you with my opinion as to whether such losses form a proper basis for the selection in question, I understand, that in the case of the St. Paul, Minneapolis and Manitoba Railway Company, the Department has 916 held that it was not proper for that company to select indemnity upon its main line for losses occurring on the St. Vincent extension, but in my opinion the grants which ultimately passed into the hands of the Manitoba Company, being under separate acts of Congress, with no original purpose of the Government that they should inure to the same company, is entirely dissimilar to the case of the Northern Pacific grant. In the latter case Congress knowingly enlarged the original grant of 1864, and in my judgment undoubtedly intended the same to be adjusted as an entirety.

However this may be, I find it unnecessary to decide this question at the present time, because it has been uniformly settled by the Supreme Court of the United States and your office, that the designation of losses was a regulation intended to be enforced only where there was a surplus indemnity lands. Where, however, an ascertained deficiency exists the danger of duplicating indemnity did not exist and the necessity for designating losses thereby terminated. In St. Paul & Pacific Railroad vs. the Northern Pacific, 139 U. S. 1, the Court found as a fact that the grant to the Northern Pacific Railroad Company so far as it lay in the State of Minnesota was deficient, and the court thereupon held:

"As to the objection that no evidence was produced of any selection by the Secretary of the Interior from the indemnity lands to make up for the deficiencies found in the lands within the place limits it is sufficient to observe that all the lands within the indemnity limits only made up in part for these deficiencies. There was therefore no occasion for the exercise of the judgment of the Secretary in selecting from them for they were all appropriated."

This ruling was re-affirmed in U. S. v. Colton Marble & Lime Company, 146 U. S., 615.

Whilst the theory of these decisions is that in cases where deficiencies exist no formal selection is necessary to the acquisition of a right in the company, the reasoning applies with greater force to cases where the question is merely as to 917 the designation of losses. Conceding then that as between the United States and the Company, a selection is neceessary only to vest title, it in my judgment follows from the decisions cited, supra, that where an ascertained deficiency exists it is not necessary to support such selections with designations of losses, a further citing of this conclusion being the decision of your office in the Hastings & Dakota Railway, 19 L. D., Page 30, where in dealing with the Departmental circular of Aug. 4, 1885, requiring railroad companies to designate losses in support of their selections your office held:

"The provision referred to directs that where indemnity selections had been theretofore made without specifications of losses, the companies should be required to designate deficiencies for which such indemnity is to be applied. . . "

"In my opinion that rule is not properly applicable in this case. The object in establishing the rule was to prevent the possibility of one basis of loss being used for more than one selection. As this grant is known to be deficient over 800,000 acres, or more than double the whole quantity of land received and receivable by the Company, the danger of a duplication of the losses does not exist and the reason of the rule ceasing, the rule itself does not operate."

In the case of the Northern Pacific Railroad Company, this office has ascertained that its grant is over three and one-half million acres deficient and had further certified that if it secure every available acre within its indemnity limits, it could not satisfy by three and a half million acres the losses which it has experienced up to the present time. Necessarily, the losses of the company will increase as time progresses, whilst the available indemnity will decrease and thereby the deficiency already ascertained will constantly grow.

Believing this case to fall clearly within the decision in the
Hastings and Dakota case, supra, I herewith return
918 the list in question with my recommendation that the
same may be approved.

As resubmitted, the list, it will be noticed, has been amended by eliminating therefrom, with the view to making into a separate clear list, the selections on the branch line which designate as bases, lands within the limits of the same line.

Very respectfully,
KBW. S. W. LAMOREUX, Commissioner.

Duplicate
"F" 1897-18448.

Department of the Interior W. J. M.
General Land Office,
S. S. M. Washington, D. C., February 23, 1897.

The Honorable,
The Secretary of the Interior.

Sir: I return, herewith, Senate Resolution received with your communication of the 19th instant, calling for information as to what deficiency, if any, existed in the grant to the Northern Pacific Railroad Company, under acts of Congress of July 2, 1864, and May 31, 1870, at the dates of the various definite locations of said road.

Responding thereto, I have the honor to report that the records of this office show that the total area of lands excepted from and lost to said grant within its primary limits at the several dates of definite location of said Northern Pacific Railroad, amounts to 10,624,746.27 acres, of which 2,887,086.57 acres were lost subsequent to the date of the Act of Congress making said original grant; that there were at the several dates of definite location, within the first 919 indemnity limits of said grant, not to exceed 7,177,769.71 acres available for selections to satisfy said total [acre] of lands excepted from and lost to said grant within its primary limits, thus leaving a deficiency of 3,446,976.56 acres, only 2,887,086.57 of which can be satisfied within the second indemnity limits, under the provisions of the Joint Resolution of Congress of May 31, 1870, above referred to, thus leaving at the dates of the definite location an ascertained deficiency in the entire grant of over 559,889.99 acres.

Very respectfully,
E. F. BEST,
Acting Commissioner.

F. Department of the Interior W. J. M.
General Land Office,
H. W. H. Washington, D. C., November 5, 1897.

The Honorable,
The Secretary of the Interior.

Sir: Again referring to your communication of May 27, 1897, wherein you call upon this office for further information as to the reply made to Senate Resolution of February 19, 1897, in reference to the extent, if any, of the deficiency within the grant to the Northern Pacific Railroad Company, I have the honor to report:

This office has in its files, books showing an aggregate area of 8,092,356 acres lying within the primary limits of the grant to the Northern Pacific R. R. Co., which, under the rulings in force, are held to have been excepted from the operation of the grant, to which amount is added 2,509,635 acres, as also lost to the grant, (being 25 per cent of a total area of 10,038,540 acres found to be within the primary limits of the grant and subject to the provisions of the act of February 26, 920 1895, providing for the classification, as mineral or non-mineral, of all lands lying within certain districts in the States of Montana and Idaho) aggregating a loss to the company under its grant in the primary limits of 10,601,991 acres.

Under the instructions of April 3, 1895 (20 L. D. 350) the "surveyed prima facie non-mineral lands" were to be classified first, and it appears from the records of this office that there has been classified 5,640,800 acres, of which 3,395,230 acres have been found to be mineral and 2,245,570 acres to be non-mineral. The percentage is thus shown to be over 55 per cent mineral, and it is reasonable to presume that the classification of the remaining lands lying within the more generally recognized mineral districts will show a larger percentage of mineral land than the above.

This office in response to Senate Resolution, supra, made an allowance of 25 per cent to the company of the total area of lands subject to mineral classification, and from the records of this office it would seem that such allowance was within same limits.

It has been also ascertained from books on file in this office that there were at the several dates of definite location of the road within the first indemnity limits of the grant 7,810,867 acres available for selection by the company to satisfy its losses in the primary limits, from which is deducted 627,409 acres, or 25 per cent of the area within the first indemnity limits falling within the districts subject to mineral classification, leaving an available balance subject to indemnity selection of 7,183,458 acres, thus showing a deficiency of 3,418,433 acres within the first indemnity limits of which only 2,887,860 acres are found to be available for selection within the second indemnity limits under the provisions of the joint resolution
of Congress approved May 31, 1870, showing an ap-
921 proximate deficiency in the entire grant of 530,573
acres.

From a careful re-examination of the records of this office upon which the report of February 23, 1897, was based it is believed that the foregoing estimate of the deficiency in the entire grant to the company is approximately correct.

In conclusion I wish to say that this office has occasion to make frequent references to the several books or records, (which are extremely bulky) from which the above figures have been compiled. If, after considering the foregoing, it is deemed advisable to have these books transmitted to your office, the same will be forwarded upon receipt of your advice to that effect.

Very respectfully,
BINGER HERMANN,
Commissioner.

KBW.

DULUTH EXHIBIT "X":—Duly Certified. Offered in evidence at page 320, this record:

Department of the Interior,
General Land Office,
Washington, D. C., August 4, 1885.

Registers and Receivers, U. S. Land Offices.

Gentlemen: Before admitting railroad indemnity selections in any case you will require preliminary lists to be filed

specifying the particular deficiencies for which indemnity is claimed. You will then carefully examine your records, tract by tract, to ascertain whether the loss to the grant actually exists as alleged. You will admit no indemnity selec-
922 tion without a proper basis therefor. If you are in doubt whether the company is entitled to indemnity for losses claimed, you will transmit the preliminary lists to this Office for instructions, and will not place the selections upon record until directed so to do.

Where indemnity selections have heretofore been made without specification of losses, you will require the companies to designate the deficiencies for which such indemnity is to be applied before further selections are allowed.

The selecting agent applying to make indemnity selections must state in his affidavit attached to the list presented that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner.

Where deficiencies exist, for which indemnity is allowed by law, the lieu selections must be made from vacant unappropriated land within proper selections and limits nearest the granted sections in which the loss occurred. You will be careful to see that this rule is strictly complied with, and will reject all selections not made in conformity thereto.

WILLIAM WALKER,
Acting Commissioner.

Approved:
L. Q. C. Lamar,
Secretary.

(3941-1M.)

923

General Land Office,
May 26, 1864.

Register and Receiver,
Duluth, Minn.,

Gentlemen: By the act Appd. May 5th, 1864, a grant of lands was made to the State of Minnesota to aid in the construction of a railroad from St. Paul to Lake Superior. The Secretary of the Interior having approved of a withdrawal of lands for said road, you will suspend from preemption settlement and sale a body of lands about twenty miles in width as indicated on the enclosed diagram "A" marked "Lake Superior" and Mississippi Railroad."

Acknowledge the date of receipt of this.

Very reseptcfully,
Your obdt. Sevt.,
J. M. EDMUNDS, Commissioner.

Department of the Interior,
General Land Office,
Nov. 2, 1866.

Register & Receiver,
Duluth, Minn.

Gentlemen: Herewith is a diagram showing the line of route, as definitely located, of the Lake Superior and Mississippi Railroad with the ten, twenty, and on the West side the thirty mile limits indicated thereon, Acts May 5, 1864, & July 13, 1866.

924 The odd sections within all three of these limits will be withdrawn from sale or location, pre-emption or homestead; except in so far as valid preemption claims may have accrued to the same, prior to the withdrawal of May 26, 1864, within the limits therein designated and prior to the receipt of this order outside of the limits fixed in that withdrawal.

As the act 1864 reserves from the grant any and all lands theretofore reserved for the purpose of aiding in any object of internal improvement or for any other purposes whatsoever no reserved lands are subject to the operation of the grant.

You will mark the line of route with the several limits on the township plats in pencil, and you will report the fact of it having been done.

The Railroad Company will be required, first, to make their selections from the 10 and 20 mile limits,—if it is then found that a deficiency exists, the same can be made up by selections from the 30 mile limit.

This Order will take effect from the date of its receipt at your office & you will advise me of the precise time it may be received by you.

Very respectfully,
Your Obt. Servant,
JOS. S. WILSON, Commissioner.

The even sections within the 10 mile limits are increased in price to $2.50 per acre and will be subject at that rate to settlement & entry under the preemption & homestead laws; but no such sections can be entered at private sale until they shall have first been offered at public auction.

JOS. S. WILSON, Commissioner.

925 1899-144247. S. S. M.
E. A. W.
F. Department of the Interior, T. A.
General Land Office,
Washington, D. C., November 24, 1899.

The Honorable,
The Secretary of the Interior.

Sir: I have the honor to acknowledge the receipt of your letter of November 15, 1899, referring to that portion of the annual report of this office which treats of the adjustment of railroad land grants, and asking certain questions concerning, and explanations of, statements relative to the adjustment of the grant to the Northern Pacific Railroad Company.

You quote the following from said report: "During the past year examinations looking to the adjustment of the following railroad grants have been completed:" state that the list given includes the main line of the Northern Pacific through the States of Wisconsin, Minnesota, Washington and Oregon, and the branch line of the Northern Pacific through Washington and Oregon, and ask why the main line through the States of North Dakota, Montana and Idaho, is omitted from the list. The line in said States was omitted from the list for the reason that such States were not examined during the last fiscal year, they having been examined previously.

It is meant by the statement quoted above that the examinations have been completed in so far as it is possible to complete them in view of the fact that there are large areas of unsurveyed lands within the States of North Dakota, Montana, Idaho, and Washington, and that therefore the quantum of the grant therein is uncertain and can only be approximated for physical reasons, and that the availability of said
926 lands for the satisfaction of the grant is also uncertain because of their liability to being classed as mineral and excepted therefrom, and the possibility of the existence of settlement claims which would defeat the grant, and of the possible creation of forest reserves within the indemnity limits which would decrease the available lands to the extent of the reservations.

The only examination of this grant which has been submitted to the Department is that within the State of Montana, which was submitted November 13, 1897, having been examined some time previously.

At the time of the writing of the office report very little had been done under the Act of July 1, 1898; the instructions thereunder were not approved until February 14, 1899; they had then to be printed, and were not issued until some time later. It was therefore impossible to tell to what extent the grant might be affected thereby, but it was sure to be in-considerable when the magnitude of the grant is taken into consideration.

The lands awarded to this company in its contest with the Saint Paul and Pacific Company, reported in 139 U. S., 1, were properly noted on the tract books of this office, and those in primary and first indemnity limits were charged against the grant under the heading properly approved, with a notation in the remarks column showing that the company received them under the decree of the Court. No examination was made of the entire second indemnity limits, for the reason that a special examination to determine the status of the grant—relative to such indemnity had been made and it had been found that the company had received all the second indemnity it was entitled to, and the lands within this belt were in that examination charged to the company, all of which
will fully appear when the adjustment is submitted for
927 the consideration of the Department. It is proper to
state here that the company claims that its second indemnity has not been satisfied, and subsequent to the examination aforesaid, and the report thereof, has made a further showing which has been examined and will be reported in due course of business.

The lands in the neighborhood of Portland, Oregon, which lie within the conflicting limits of the grant by the Act of July 2, 1864, declared forfeited by the Act of September 29, 1890, and the grant by the Joint Resolution of May 31, 1870, were treated as a part of the area of the latter grant; for if said grant does not take these lands, and the Department holds it does not, it is entitled to indemnity for them. The matter is now pending in the courts.

The quantity of lands within the common primary limits of the constructed main and branch lines in the neighborhood of Ainsworth was determined and a moiety was charged to each. The treatment of the lands within the common primary limits of the constructed branch line and the unconstructed and forfeited main line, was practically the same, but as the Department required the company to elect which of the alternate odd sections within such limits it would take as its moiety; that is to say, Sections 1, 5, 9, 13, etc., or Sections 3, 7, 11, 15, etc., and it elected to take generally those beginning with "1" but asked and received permission to surrender a portion thereof and to take in lieu of them certain tracts within the Government moiety in Sections 3, 7, 11, 15, etc., the actual area of the tracts apportioned to the company was computed as the area of its grant within said conflicting limits, instead of ascertaining the area of the whole conflict and crediting the company with an exact half thereof. It is probable there is very little or no difference between the areas of the two sets of sections, but at all events the company got credit for the exact area of the sections apportioned to it.

A part of these lands are situated in Oregon, and while
928 there are no lands in Oregon within the limits of the
constructed branch line which are not also within the limits of the main line, either constructed or unconstructed, the portion- lying outside the limits of the constructed main line were under this method of adjustment treated as clear lands, and the tracts falling to the government were not reckoned as a part of the grant.

The approximate number of acres of unsurveyed lands within the primary limits of the grant which are not available for the purposes thereof, because excepted therefrom by Indain and military reservations, is 2,500,000, and the approximate number of acres of unsurveyed lands within said limits which may or may not be available for the grant, because of the reasons stated, is 14,000,000. There are approximately 480,000 acres of unsurveyed lands within said limits and also within the Mount Rainier Forest Reserve which the company has relinquished under the Act of March 2, 1899, and for which it is entitled to indemnity outside the limits of its grant or within even-numbered sections within such limits, and it is probable this quantity can be made available. In addition to this there are approximately 1,400,000 acres of unsurveyed lands within the indemnity limits of the grant which may or may not upon survey be found available for the purposes thereof.

As before stated, no portion of the company's grant, excepting that within the State of Montana, and the second indemnity within the State of Minnesota, has been submitted. The adjustment of the whole grant will be submitted in due course of business, and when submitted full explanation of the methods adopted will be given.

In conclusion I have the honor to state that the portion of my report which relates to this subject was written for the purpose of giving information to the Department relative to
the character and quantity of the work performed and
929 the results accomplished during the fiscal year, and
without any intention of making an authoritative statement as to whether or not the Northern Pacific grant by the Act of 1864 could be satisfied.

In view of the large quantity of unsurveyed lands within the limits of the grant, and of the uncertainty of their availibility for use in the satisfaction of it; of the litigation pending involving lands within the conflicting limits aforesaid and the true eastern terminus of the grant; and considering the proceedings now in progress under the Act of July 1, 1898, and the right of selection for lands within the Mount Rainier Forest

Reserve under the Act of March 2, 1899 and the prospect of the creation of other forest reserves within the limits of the grant, I am of the opinion that it cannot at this time be stated with any degree of certainty that there are or are not sufficient lands available to satisfy the Northern Pacific grant under the Act of 1864.

Very respectfully,
BINGER HERMANN,
Commissioner.

930 DEFENDANT'S DULUTH EXHIBIT "O." Offered in evidence at page 321, this record.

931

F. 4-207 a. L. L. M.

Department of the Interior,
C. A. O. General Land Office,
Washington, D. C., March 7, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of so much as is shown thereon of the diagram prepared by this office to show the line of the road and the limits of the grant by the Act of May 5, 1864, of the Lake Superior and Mississippi R. R. is a true and literal exemplification from the original on file in this office.

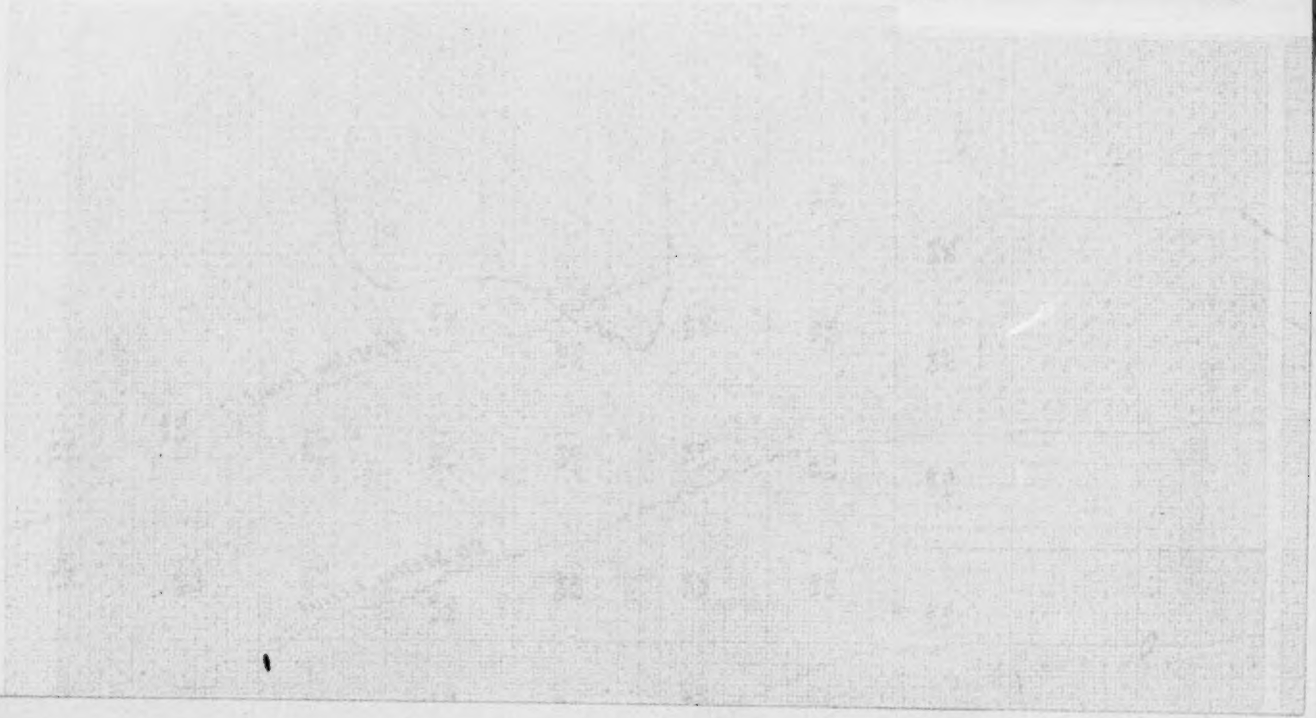
[Seal U. S. Gen. Land Office.]

In Testimony whereof I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of General Land Office.

[10-cent I. R. Stamp Canceled.]

FOLD OUT IS TOO LARGE TO BE FILMED



932 DULUTH EXHIBIT "P." Offered in evidence at page 321, this record.

M. L. 115541. S. L. M.

"F" [10-cent I. R. stamp Canceled.]

Department of the Interior,
F. C. T. General Land Office,
Washington, D. C., Feby. 27, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of list No. 8, of second indemnity lands relinquished by the Northern Pacific Railroad Company, filed in the local office at St. Cloud, Minn., May 10, 1892, is a true and literal exemplification of the original on file in this office.

[Seal United States General Land Office]

In Testimony whereof I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

933 May 10, 1892=61434. Co's files.

Relinquishment of Indemnity Lands.
Selected by Northern Pacific R. R. Co.

U. S. Land Office
May 10, 1892.
Filed..................189..
St. Cloud, Minn. Approved..............189..

Land Department
Northern Pacific R. R. Co.

In List No. 8 (2nd Indemnity) of selections of Public Lands by the Northern Pacific Railroad Company as enuring to it under Grants of July 2, 1864, and May 31, 1870, in the Fergus Falls U. S. Land District, Minn.

Posted Apl. 20/96.
M. P. W.

934 Land Department
Northern Pacific Railroad Company
In List No. 8 (2nd Indemnity).

State of Minnesota,
U. S. Land Office at Fergus Falls.
(Now St. Cloud.)

Northern Pacific Railroad Company.
Relinquishment of Second Indemnity Lands in Minnesota.

The Northern Pacific Railroad Company, by its Land Commissioner, Charles B. Lamborn, hereby relinquishes to the United States, all its right, title and interest in and to the tracts of land described in the list hereto attached, selected as indemnity lands by said Company under its grant by act of Congress of July 2nd, 1864, and the joint resolution of Congress approved May 31st, 1870, in Indemnity Selection List No. 8, filed in the United States Land Office at Fergus Falls, Minnesota, on October 29th, 1883.

CHAS. B. LAMBORN,
Land Commissioner.

To the Honorable Commissioner,
of the General Land Office.

State of Minnesota,
County of Ramsey—ss.

On this 9th day of May, A. D. 1892, before me personally appeared Charles B. Lamborn, Land Commissioner of the Northern Pacific Railroad Company, to me known to be the person described in, and who signed the attached relinquishment.

Witness my hand and official seal the day and year last above written.

[Seal]

P. P. STARIN,
Notary Public, Ramsey Co., Minnesota.

935 North of base line and West of the 5th Principal Meridian.

Northern Pacific Railroad.

Lists of selections made at U. S. Land Office, Fergus Falls, Minn.

PARTS OF SECTION	Sec.	Town.	Range	AREA		REMARKS
				Acres	100ths	
Lots 1 & 2 & e ½ nw ¼	15	129	37	146	.59	Hd. 7958 7/10/83. Pat. 9/9/90
[L] w ¼ se ¼	3	130	39	40		Hd. 8239 7/9/84. Pat. 5/13/90
Nw ¼ ne ¼—ne ¼ nw ¼	17	"	"	80		Excepted from withdrawal on definite location. Hd. 7943, 6/29/83. F. P. 7/1/90
Sw ¼ ne ¼—se ¼ nw ¼	"	"	"	80		Hd. 7867, 4/18/85. Pat. 3/13/90
Sw ¼ sw ¼	1	131	41	40		Excepted from withdrawal on definite location. H. A. April 1883, Hd. 80/73 11/9/83. Approved for Pat. 3/15/90
Lot 7	33	132	41	35	.50	P. D. L. 706 6/12/71. Pat. 5/5/75
Frl. N ½ ne ¼—Frl. ne ¼ nw ¼	1	130	40	123	.37	Hd. 7983, 8/3/83. Pat. 11/8/88
Sw ¼ ne ¼	15	132	42	40		Hd. 461, 10/22/69. Pat. 6/24/78
Lot 3. ne ¼ sw ¼ s ½ sw ¼	25	132	42	157	.67	Excepted from withdrawal on definite location. Hd. 7853 4/12/83. Approval for Pat. 3/15/90
Lot 2—n ½ se ¼	23	132	43	111	.68	Hd. 8108, 12/4/83. Pat. 3/31/88
N ½ sw ¼ n ½ se ¼	29	"	"	160		Hd. 8524 2/27/86. Pat. 3/24/85
Total				1008	.81	Acres.

936 DULUTH EXHIBIT "Q."—Offered in evidence at page 321, this record.

M. L. 115541. S. L. M.

"F" [10-cent I. R. stamp Canceled.]

Department of the Interior,
F. C. L. General Land Office,
Washington, D. C., Feby. 27, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of list No. 19 of second indemnity lands relinquished by the Northern Pacific Railroad Company, filed in the local office at Crookston, Minn., June 16, 1892, is a true and literal exemplification of the original on file in this office.

In Testimony whereof I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

[Seal United States
General Land Office]

BINGER HERMANN,
Commissioner of the General Land Office.

937 1892=77190. Noted
T. C.

Relinquishment of Indemnity Lands
Selected by Northern Pacific R. R. Co.

Filed............189.. Approved............189..

Land Department
Northern Pacific Railroad Co.

In List No. 19 (2nd Indemnity) of selections of Public Lands made by the Northern Pacific Railroad Company as enuring to it under grants of July 2, 1864, and May 31, 1870, in the Crookston U. S. Land District, Minn.

U. S. Land Office,
Crookston, Minn.
Received June 16, 1882. Hugh Thompson, Register.

938 Land Department
Northern Pacific Railroad Company,
In List No. 19 (2nd Indemnity).

State of Minnesota,
U. S. Land Office of Crookston.

Northern Pacific Railroad Company,
Relinquishment of Second Indemnity Lands in Minnesota.

The Northern Pacific Railroad Company, by its Land Commissioner, Charles B. Lamborn, hereby relinquishes to the United States, all its right, title and interest in and to the tracts of land described in the list hereto attached, selected as indemnity lands by said Company under its grant and by act of Congress of July 2nd, 1864, and the joint resolution of Congress approved May 31st, 1870, in Indemnity selection List No. 19, filed in the United States Land Office at Crookston, Minnesota, on June 22nd, 1885.

CHAS. B. LAMBORN,
Land Commissioner.

To the Honorable Commissioner,
of the General Land Office.

State of Minnesota,
County of Ramsey—ss.

On this 11th day of June, A. D. 1892, before me personally appeared Charles B. Lamborn, Land Commissioner of the Northern Pacific Railroad Company, to me known to be the person described in, and who signed the attached relinquishment.

Witness my hand and official seal the day and year last above written.

[Seal] P. P. STRAIN,
Notary Public, Ramsey Co., Minnesota.

939 North of Base Line and West of 5th Principal Meridian.

Northern Pacific Railroad.

List of Selections Made at U. S. Land Office, Crookston, Minn.

PARTS OF SECTION	Sec.	Town.	Range	AREA		REMARKS
				Acres	100ths	
Lot 1	7	145	45	48	35	Swamp Pat.
Ne ¼ ne ¼	23	145	46	40		"
Lots 3 & 4	31	"	"	80	15	"
E ½ sw ¼ se ¼	"	"	"	240		"
W ½ sw ¼	21	146	46	80		"
Sw ¼ ne ¼ se ¼ nw ¼	23	"	"	80		"
S ½ nw ¼ n ½ sw ¼	25	"	"	160		"
Whole (Frl.)	3	145	47	637	34	"
Whole (Frl.)	5	"	"	638	08	"
Lot 1 ne ¼ e ½ nw ¼ n ½ se ¼	7	"	"	357	85	"
Whole	9	"	"	640		"
Whole	11	"	"	640		"
Whole	15	"	"	640		"
Whole	17	"	"	640		"
Lots 3 & 4—se ¼ sw ¼	19	"	"	112	40	"
Sw ¼ ne ¼ nw ¼ nw ¼ s ½ nw ¼ s ½	29	"	"	480		"
Whole (Frl.)	31	"	"	630	88	"
Lots 2—3 & 4 s ½ ne ¼—se ¼ nw ¼	19	146	47	227	01	"
E ½ sw ¼—se ¼	"	"	"	240		"
S ½ ne ¼—s ½ nw ¼—s ½	21	"	"	480		"
S ½ ne ¼—s ½ nw ¼ s ½	23	"	"	480		"
Whole	25	"	"	640		"
Whole	27	"	"	640		"
Whole	29	"	"	640		"
Whole (Frl)	31	"	"	627	20	"
Whole	33	"	"	640		"
N ½	35	"	"	320		"
Nw ¼ nw ¼	9	144	48	40		"
Sw ¼ sw ¼	3	145	48	40		"
Whole (Frl.)	5	"	"	642	32	"
Whole	9	"	"	640		"
Whole	15	"	"	640		"
Ne ¼—e ½ nw ¼—n ½ se ¼—se ¼ se ¼	17	"	"	360		"
Whole	21	"	"	640		"
Whole	23	"	"	640		"
Whole	25	"	"	640		"
Whole	27	"	"	640		"
Whole	33	"	"	640		"
Whole	35	"	"	640		"
For'd				17281	58	

940

PARTS OF SECTION	Sec.	Town.	Range	AREA		REMARKS
				Acres	100ths	
For'd				17281.58		
Lot 1—e ½ nw ¼—ne ¼ sw ¼	1	144	49	162.56		Sold 7/27/70 Wt. No. 8 Pat. 9/1/71
Ne ¼	"	"	"	160		Sold 7/27/70 Wt. No. 9 Pat. 9/1/71
Lot 2—nw ¼ sw ¼—se ¼ sw ¼	"	"	"	109.64		P. E.—10/1/70 P. D. S. 135 11/2/69
Se ¼	"	"	"	160		Sold 2/23/70 A. C. S. 198 Pat. 4/5/71
Lots 1 & 2	1	145	49	61		P. D. S. 537 8/2/72 Let 10/1/71 Canceled 4/7/73 Reinstated 11/10/87 Pat 1/28/91
Lot 6—ne ¼ se ¼	"	"	"	72		P. E.—Aug. 13/72 Pat. 3/4/79
Se ¼ ne ¼	"	"	"	40		P. D. S. 532 8/2/72 Pat. 12/20/89
Lots 1 & 2	13	"	"	66.75		P. E.—11/20/83 P. D. S. 528 8/2/72 Pat. 2/11/88
Lots 3—5 & 6—se ¼ ne ¼	"	"	"	95		P. E.—8/27/82 Pat. 9/20/89
Lot 1	11	144	49	6.48		Sold 3/22/70 D. S. 135 11/2/69 F. P. 10/1/70
Total				18215.01		Acres.

941 DULUTH EXHIBIT "R." Offered in evidence at page 321, this record.

M. L. 115541.
"F"

S. L. M.
[10-cent I. R. stamp
Canceled.]

Department of the Interior,
F. C. L. General Land Office,
Washington, D. C., Feby. 27, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of list No. 24 of second indemnity lands relinquished by the Northern Pacific Railroad Company, filed in the local office at St. Cloud, Minn., June 16, 1892, is a true and literal exemplification of the original list on file in this office.

In Testimony whereof I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

[Seal United States
General Land Office]

BINGER HERMANN,
Commissioner of the General Land Office.

942 1892=78265

Relinquishment of Indemnity Lands
Selected by Northern Pacific R. R. Co.

U. S. Land Office
Filed June 16, 1892,
St. Cloud, Minn.

Approved............189..

Land Department
Northern Pacific Railroad Co.

In List No. 24 (2nd Indemnity) of selections of Public Lands made by the Northern Pacific Railroad Company as enuring to it under grants of July 2, 1864, and May 31, 1870, in the St. Cloud U. S. Land District, Minn.

943 Land Department
Northern Pacific Railroad Company,
In List No. 24 (2nd Indemnity).

State of Minnesota,
U. S. Land Office at St. Cloud.

Northern Pacific Railroad Company,
Relinquishment of Second Indemnity Lands in Minnesota.

The Northern Pacific Railroad Company, by its Land Commissioner, Charles B. Lamborn, hereby relinquishes to the United States, all its right, title, and interest in and to the tracts of land described in the list hereto attached, selected as indemnity lands by said Company under its grant by act of Congress of July 2nd, 1864, and the joint resolution of Congress approved May 31st, 1870, in Indemnity Selection list No. 24, filed in the United States Land Office at St. Cloud, Minnesota on November 5th, 1883.

CHAS. B. LAMBORN,
Land Commissioner.

To the Honorable Commissioner
of the General Land Office.

State of Minnesota,
County of Ramsey—ss.

On this 11th day of June, A. D. 1892, before me personally appeared Charles B. Samborn, Land Commissioner of the Northern Pacific Railroad Company, to me known to be the person described in, and who signed the attached relinquishment.

Witness my hand and official seal the day and year last above written.

[Seal]

P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

944 North of Base Line and West of 5th Principal Meridian.

Northern Pacific Railroad.

List of Selections made at U. S. Land Office, St. Cloud, Minn.

PARTS OF SECTION	Sec.	Town.	Range	AREA		REMARKS
				Acres	100ths	
W ½ ne ¼—s ½ nw ¼—(Frl.)	31	128	34	162.53		H'd. 13685 4/28/84 Pat. 8/15/89
Frl. N ½ nw ¼	"	"	"	82.95		H'd 10085 7/8/78—Pat. 7/24/89
Frl. N ½ ne ¼ sw ¼ ne ¼ se ¼ nw ¼	1	128	35	141.36		H'd 12652 — 1/7/84—Pat. 12/8/90.
Se ¼	"	"	"	160		H'd 10209—2/14/79 Can. 10/22/81 — Reinstated 2/28/85 Pat. 11/30/85
E ½ se ¼	9	"	"	80		H'd 12641—12/19/83 Pat. 7/3/90.
				626.84		Acres.

945 DULUTH EXHIBIT "S." Offered in evidence at page 321, this record.

M. L. 114860.
"F"

S. L. M.
[10-cent I. R. stamp
Canceled.]

F. C. L.

Department of the Interior,
General Land Office,
Washington, D. C., Feby. 6th, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of list No. 10 of second (2nd) indemnity lands relinquished by the Northern Pacific Railroad Company filed in the local office at St. Cloud, Minn., May 10, 1897, is a true and literal exemplification of the original list on file in this office.

[Seal United States
General Land Office]

In Testimony whereof I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

946 May 10, 1892, 61434.

Relinquishment of Indemnity Lands Selected by Northern Pacific R. R. Co.

U. S. Land Office. Form D. D. 153 3-92. ½ M. S.
Filed May 10, 1892. Approved.............189..

Land Department
Northern Pacific Railroad Co.

In List No. 10 (2nd Indemnity) of selections of Public lands made by the Northern Pacific Railroad Company as enuring to it under grants of July 2, 1864 and May 31, 1870, in the Fergus Falls U. S. Land District, Minn.

947 Land Department
Northern Pacific Railroad Company
In List No. 10 (1st Indemnity).

State of Minnesota,
U. S. Land Office at Fergus Falls.
(Now St. Cloud.)

Northern Pacific Railroad Company.
Relinquishment of First Indemnity Lands in Minnesota.

The Northern Pacific Railroad Company, by its Land Commissioner, Charles B. Lamborn, hereby relinquishes to the United States, all its right, title and interest in and to the tracts of land described in the list hereto attached, selected as indemnity lands by said Company under its grant, by Act of Congress of July 2nd, 1864, in Indemnity Selection List, No. 10, filed in the United States Land Office at Fergus Falls, Minnesota, on December 20th, A. D. 1886.

Chas. B. Samborn,
Land Commissioner.

To the Honorable Commissioner,
of the General Land Office.

State of Minnesota,
County of Ramsey—ss.

On this 9th day of May, A. D. 1892, before me personally appeared Charles B. Lamborn, Land Commissioner of the Northern Pacific Railroad Company, to me known to be the person described in, and who signed the attached relinquishment.

Witness my hand and official seal the day and year last above written.

[Seal]

P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

948 North of Base Line and West of 5th Principal Meridian.

Northern Pacific Railroad.

List of Selections Made at U. S. Land Office, Fergus Falls, Minn.

PARTS OF SECTION	Sec.	Town.	Range	AREA Acres	AREA 100ths	REMARKS
S ½ ne	27	131	36	80		P D S 1226 5/29/72 Sept. 3/20/71. Pat. 9/30/84
Sw ¼ nw ¼	15	131	37	40		P D S 1197 5/17/72 Sept. 5/29/71. Pat. 4/25/77
Total				120 Acres.		

949 DULUTH EXHIBIT "T." Offered in evidence at page 321, this record.

M. L. 114860.
"F"

S. L. M.
[10-cent I. R. stamp
Canceled.]

Department of the Interior,
F. C. L. General Land Office,
Washington, D. C., Feby. 6, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of list No. 14 of second (2nd) indemnity lands relinquished by the Northern Pacific Railroad Company filed in the local office at Duluth, Minn., April 11, 1893, is a true and literal exemplification of the original list on file in this office.

[Seal United States General Land Office]

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

950 Relinquishments of Indemnity Lands
Selected by Northern Pacific R. R. Co.
Form L. D. 153. 293 350 s.

Filed............189.. Approved............189..

Land Department
Northern Pacific Railroad Co.

List No. 14 (2nd Indemnity) of selections of Public Lands by the Northern Pacific Railroad Company as enuring to it under grants of July 2, 1864, and May 31, 1870, in the Duluth U. S. Land District, Minnesota.

Filed U. S. Land Office, Duluth, Minn., April 11th, 1893.
Munroe Nichols, Register.

951 Land Department
Northern Pacific Railroad Company,
List No. 14 (2nd Indemnity).

State of Minnesota,
U. S. Land Office at Duluth.

Northern Pacific Railroad Company.
Relinquishment of Second Indemnity Lands in Minnesota.

The Northern Pacific Railroad Company by its Land Commissioner, Charles B. Lamborn, hereby relinquishes to the United States, all its right, title and interest in and to the tracts of land described in the list hereto attached, selected as indemnity lands by said Company under its grant by Act of Congress of July 2nd, 1864, and the joint resolution of Congress approved May 31st, 1870, in Indemnity Selection List No. 14, filed in the United States Land Office at Duluth, Minnesota, on October 17th, 1883.

CHAS. B. LAMBORN,
Land Commissioner.

To the Honorable Commissioner,
of the General Land Office.

State of Minnesota,
County of Ramsey—ss.

On this 10th day of April, A. D. 1893, before me personally appeared Charles B. Lamborn, Land Commissioner of the Northern Pacific Railroad Company, to me known to be the person described in and who signed the attached relinquishment.

Witness my hand and official seal the day and year last above written.

[Seal] P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

952 North of Base Line and West of 4th Principal Meridian.

.... Railroad.

List of Selections Made at U. S. Land Office, Duluth, Minnesota.

No.	PARTS OF SECTION	Sec.	Town.	Range	AREA Acres	AREA 100ths
1	Lot 7	5	53	16	49.50	
2	Nw ¼ ne ¼ & ne ¼ nw ¼	7	"	"	80	
3	N ½ sw ¼ sw ¼ sw ¼ sw ¼ & se ¼	3	53	17	280	
4	Lots 1 & 2 and sw ¼ ne ¼ n ½ se ¼	5	"	"	194.67	
5	Lots 4 5 & 6 and s ½ nw ¼ n ½ sw ¼ & s w ¼ sw ¼	3	54	17	271.20	
6	Lots 1—3 & 4 sw ¼ ne ¼ s ½ nw ¼ & sw ¼	5	"	"	383.74	
7	Ne ¼ e ½ nw ¼ ne ¼ sw ¼ & nw ¼ se ¼	7	"	"	320	
8	W ½ ne ¼	9	"	"	80	
9	Ne ¼ ne ¼ nw ¼ e½ se ¼	15	"	"	280	
10	S ½ sw ¼ & se ½	17	"	"	240	
11	Ne ¼ ne ¼ & nw ¼ se ¼	19	"	"	80	
12	Lots 1 & 2 and N ½ ne ¼ sw ¼ ne ¼ n ½ nw ¼ sw ¼ nw ¼ e ½ sw ¼ w ½ se ¼ & se ¼ se ¼	23	"	"	494.25	
13	W ½ nw ¼ nw ¼ sw ¼	25	"	"	120	
14	N ½ ne ¼ nw ¼ & sw ¼ sw ¼	27	"	"	280	
15	S ½ ne ¼ ne ¼ & w ½ nw ¼	33	"	"	440	
16	Nw ¼ ne ¼ & nw ¼ nw ¼	35	"	"	80	
17	Se ¼ se ¼	31	55	17	40	
18	Se ¼ ne ¼ s ½ sw ¼ & w ½ se ¼	33	"	"	200	
19	Lot 4 sw ¼ nw ¼	5	54	18	78.73	
20	N ½ nw ¼ sw ¼ nw ¼	9	"	"	120	
21	Sw ¼ se ¼	11	"	"	40	
22	nw ¼ ne ¼ ne ¼ sw ¼ & ne ¼ se ¼	15	"	"	120	
23	Ne ¼ ne ¼ & s ½ ne ¼	19	"	"	120	
24	Sw ¼ ne ¼ se ¼ nw ¼ ne ¼ sw ¼—s ½ sw ¼ & w ½ se ¼	21	"	"	280	
25	W ½ nw ¼	27	"	"	80	
26	Se ¼	19	55	18	160	
27	W ½ ne ¼ w ½ se ¼—w ½	29	"	"	480	
28	Whole	31	"	"	620.38	
29	Lot 2	1	53	19	49.32	
30	S ½ sw ¼	1	54	"	80	
31	Lots 1—2 & 3 and s ½ ne ¼ e ½ se ¼	5	"	"	277.86	
32	W ½ sw ¼	27	"	"	80	
		Forward			6499.65	

953 North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of Selections Made at U. S. Land Office, Duluth, Minnesota.

No.	PARTS OF SECTION	Sec.	Town.	Range	AREA	
					Acres	100ths
					6499	65
33	W ½ sw ¼	29	54	19	80	
34	N ½ se ¼—sw ¼ se ¼	31	"	"	120	
35	Sw ¼ sw ¼—s ½ se ¼	33	"	"	120	
36	Sw ¼ ne ¼—se ¼ nw ¼	17	55	19	80	
37	Lots 2—3 & 4 and sw ¼ ne ¼ se ¼ nw ¼—sw ¼ se ¼	19	"	"	222	84
38	Ne ¼ ne ¼ nw ¼—s ½ nw ¼	25	"	"	280	
39	S ½	25	"	"	320	
40	Lot 2—sw ¼ ne ¼	3	54	20	80	80
41	Nw ¼ se ¼	5	"	"	40	
42	N ½ ne ¼ sw ¼ se ¼	11	"	"	520	
43	Ne ¼— sw ¼ n ½ se ¼ sw ¼ se ¼	13	"	"	440	
44	Se ¼ sw ¼	21	"	"	40	
45	Ne ¼ nw ¼	29	"	"	40	
46	Nw ¼ ne ¼	33	"	"	40	
47	Ne ¼ ne ¼ nw ¼—s ½ nw ¼ ne ¼ sw ¼ nw ¼ se ¼	23	55	20	360	
48	Ne ¼ ne ¼	25	"	"	40	
49	Sw ¼ se ¼	5	54	21	40	
50	N ½ ne ¼	15	"	"	80	
51	Sw ¼ ne ¼—se ¼ nw ¼—e ½ sw ¼ nw ¼ se ¼	27	"	"	200	
52	Ne ¼ sw ¼—sw ¼ sw ¼ se ¼ se ¼	33	"	"	120	
53	Se ¼ ne ¼—se ¼ sw ¼ ne ¼ se ¼—s ½ se ¼	35		2	200	
54	Lots 1 & 6	33	55	21	56	
55	Sw ¼ se ¼	3	53	22	40	
56	Ne ¼ sw ¼—se ¼ se ¼	23	54	22	80	
57	Sw ¼ ne ¼ e ½ nw ¼	25	"	"	120	
58	Se ¼ ne ¼—se ¼ nw ¼ ne ¼ sw ¼—se ¼ se ¼	27	"	"	160	
59	Ne ¼ se ¼	29	"	"	40	
60	Nw ¼ se ¼	33	"	"	40	
61	Sw ¼ sw ¼	35	"	"	40	
62	Lots 1 & 2	19	53	23	105	14
63	Sw ¼ ne ¼	3	54	23	40	
64	Lot 10—s ½ nw ¼ & sw ¼	5	"	"	282	25
65	S ½ se ¼	7	"	"	80	
66	Ne ¼ nw ¼—n ½ se ¼ sw ¼ se ¼	9	"	"	160	
		Forward,			11206	68

954 **North of Base Line and West of 4th Principal Meridian.**

Northern Pacific Railroad.

List of Selections Made at U. S. Land Office, Duluth, Minnesota.

No.	PARTS OF SECTION	Sec.	Town.	Range	AREA	
					Acres	100ths
					11206.68	
67	W ½—w ½ sw ¼ & se ¼	17	54	23	560	
68	Lots 3 & 4 and sw ¼ ne ¼ se ¼ nw ¼—ne ¼ sw ¼ n ½ se ¼	19	"	"	283.28	
69	Nw ¼ nw ¼	27	"	"	40	
70	N ½ ne ¼—sw ¼ ne ¼—nw ¼ n ½ sw ¼ —se ¼ se ¼ & w ½ se ¼	29	"	"	480	
71	Lot 2 and se ¼ nw ¼ ne ¼ sw ¼ se ¼ se ¼	31	"	"	160.87	
72	Lot 6 and nw ¼—w ¼ sw ¼	33	"	"	272	
73	Se ¼ ne ¼ e ½ sw ¼—nw ¼ se ¼	35	"	"	160	
74	W ½ ne ¼ se ¼ nw ¼—nw ¼ se ¼	27	55	23	160	
75	Lots 1—7 & 8 and N ½ ne ¼ e ½ sw ¼—w ¼ se ¼	31	"	"	297	
		Total			13619.83 Acres	

955 **DULUTH EXHIBIT "U."** Offered in evidence, at page 321, this record.

M. L. 114860. S. L. M.

"F" [10-cent I. R. stamp Canceled.]

Department of the Interior,
F. C. L. General Land Office,
Washington, D. C., Feby. 6, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of list No. 11 of second (2nd) indemnity lands relinquished by the Northern Pacific Railroad Company, filed in the local office at Duluth, Minn., April 11, 1893, is a true and literal exemplification of the original list on file in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the City of Washington, on the day and year above written.

[Seal United States General Land Office]

BINGER HERMANN,
Commissioner of the General Land Office.

956 1894

Aug 28-1894.

92512

Relinquishments of Indemnity Lands.
Selected by Northern Pacific R. R. Co.

Form L. D. 153. 2-93.250S

Filed............189.. Approved............189..

Land Department
Northern Pacific Railroad Co.

List No. 11 (2nd Indemnity) of selections of public lands made by the Northern Pacific Railroad Company as enuring to it under grants of July 2, 1864, and May 31, 1870, in the Duluth, U. S. Land District, Minnesota.

U. S. Land Office,
Duluth, Minn., April 11th, 1893.
MUNROE NICHOLS, Register.

957 Land Department
Northern Pacific Railroad Company.
List No. 11 (2nd Indemnity).

State of Minnesota,
U. S. Land Office at Duluth,
..188..

Northern Pacific Railroad Company,
Relinquishment of Second Indemnity Lands in Minnesota.

The Northern Pacific Railroad Company, by its Land Commissioner, Charles B. Lamborn, hereby relinquishes to the United States, all its right, title and interest in and to the tracts of land described in the list hereto attached, selected as indemnity lands by said Company under its grant by Act of Congress of July 2nd 1864, and the joint resolution of Congress approved May 31st, 1870, in Indemnity Selection List No. 11, on October 17th, 1883.

CHARLES B. LAMBORN,
Land Commissioner.

To the Honorable Commissioner,
of the General Land Office.

State of Minnesota,
County of Ramsey—ss.

On this 10th day of April A. D., 1893 before me personally appeared Charles B. Lamborn, Land Commissioner of the Northern Pacific Railroad Company, to me known to be the person described in, and who signed the attached relinquishment.

Witness my hand and official seal the day and year last above written.

[Seal] P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

958 North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of Selections Made at U. S. Land Office, Duluth, Minnesota.

No.	PARTS OF SECTION	Sec.	Town.	Range	AREA Acres	AREA 100ths
1	Se ¼ ne ¼	9	54	19	40	
2	Se ¼ se ¼	19	"	"	40	
3	Lot 8	15	55	19	12.70	
4	Ne ¼ sw ¼ & Lot 1	19	"	"	73.32	
5	Sw ¼ se ¼	27	"	"	40	
6	Ne ¼ nw ¼ & Lots 10	31	"	"	72	
7	Nw ¼ nw ¼	29	54	20	40	
8	Ne ¼ sw ¼ & nw ¼ se ¼	13	55	20	80	
9	S ½ nw ¼	15	54	21	80	
10	Lot 4	19	"	"	41.42	
11	Sw ¼ ne ¼ & ne ¼ sw ¼	35	"	"	80	
		Total			599.44 Acres	

959 DULUTH EXHIBIT "V"
Offered in evidence at page 321, this record.

M. L. 114860. S L M

[10-cent I. R. Stamp canceled]

"F"

Department of the Interior,
F.C.L. General Land Office.
Washington, D. C., Feby. 6th, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of list No. 12 of second (2nd) indemnity lands relinquished by the Northern Pacific Railroad Company filed in the local office at Crookston, Minn., April 19, 1893, is a true and literal exemplification of the original list on file in this office.

[Seal United States General Land Office]

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

960 1893=43456

Relinquishment of Indemnity Lands.

Form L. D. 153 3-92. ¼ M. S.

Filed............189.. Approved............189..

Land Department
Northern Pacific Railroad Co.

In List No. 12 (2nd Indemnity) of selections of public lands made by the Northern Pacific Railroad Company as enuring to it under grants of July 2, 1864, and May 31, 1870, in the Crookston U. S. Land District, Minnesota.

U. S. Land Office, Crookston, Minn.
Received and filed April 19, 1893.
L. K. AAKER, Receiver.

961 Land Department
Northern Pacific Railroad Company.
In List No. 12 (2nd Indemnity)

State of Minnesota,
U. S. Land Office at Crookston.
..189..

Northern Pacific Railroad Company,
Relinquishment of Second Indemnity Lands in Minnesota.

The Northern Pacific Railroad Company, by its Land Commissioner, Charles B. Lamborn, hereby relinquishes to the United States, all its right, title and interest in and to the tracts of land described in the list hereto attached, selected as indemnity lands by said Company under its grant by Act of Congress of July 2nd, 1864, and the joint resolution of Congress approved May 31st, 1870, in Indemnity Selection List No. 12, filed in the United States Land Office at Crookston, Minnesota, on October 15th, 1883.

CHAS. B. LAMBORN,
Land Commissioner.

To the Honorable Commissioner,
of the General Land Office.

State of Minnesota,
County of Ramsey—ss.

On this 18th day of April, A. D. 1893, before me personally appeared Charles B. Lamborn, Land Commissioner of the Northern Pacific Railroad Company, to me known to be the person described in, and who signed the attached relinquishment.

Witness my hand and official seal the day and year last above written.

[Seal]

P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

962

North of Base Line and West of 5th Principal Meridian.

Northern Pacific Railroad.

List of Selections Made at U. S. Land Office, Crookston, Minn.

No.	PARTS OF SECTION	Sec.	Town.	Range	AREA Acres	AREA 100ths
1	S ½ & Lots 1-2-5-6 & 8	1	141	36	605	.25
2	S ½ ne ¼—s ½ nw ¼ n ½ sw ¼—sw ¼ sw ¼ n ½ se ¼ & Lots 1-2 & 3	3	"	"	480	.48
3	S ½ ne ¼—se ¼ sw ¼—se ¼ & Lots 1-2-4 & 6	5	"	"	480	.38
4	W ½ ne ¼—nw ¼ nw ¼ sw ¼ & Lot 3	9	"	"	266	.75
5	W ½ ne ¼—s ½ nw ¼ nw ¼ sw ¼ & Lots 4 & 5	11	"	"	305	.05
6	Ne ¼—ne ¼ nw ¼	13	"	"	200	
7	S ½ ne ¼ w ½ nw ¼—se ¼ nw ¼ n ½ sw ¼—sw ¼ sw ¼	15	"	"	320	
8	Ne ¼ ne ¼ & Lot 3	23	"	"	66	.00
9	Se ¼ sw ¼ & s ½ se ¼	25	"	"	120	
10	E ½ sw ¼ & sw ¼ se ¼	27	"	"	120	
11	Se ¼ sw ¼	35	"	"	40	
12	Sw ¼ nw ¼ & Lots 2 & 3 ne ¼ se ¼—e ½ se ¼	5	142	36	203	.40
13	E ½ se ¼—ne ¼ sw ¼—Lot 5	7	"	"	160	.36
14	N ½ ne ¼—sw ¼ ne ¼—nw ¼ w ½ sw ¼—se ¼ sw ¼ s ½ se¼—ne ¼ se ¼	9	"	"	280	
15	Ne ¼ sw ¼	11	"	"	40	
16	Se ¼ nw ¼—se ¼ sw ¼ & Lot 2	13	"	"	120	.33
17	n ½ ne ¼—se ¼ ne ¼	15	"	"	120	
18	Ne ¼ ne ¼—sw ¼ ne ¼ s ½ nw ¼ & e ½ sw ¼	17	"	"	240	
19	N ½ ne ¼—sw ¼ ne ¼ & Lots 2 e ½ nw ¼ e ½ sw ¼ w ½ se ¼ & se ¼ se ¼	19	"	"	406	.75
20	W ½ ne ¼—se ¼ ne ¼ sw ¼ sw ¼ & se ¼	21	"	"	320	
21	W ½ ne ¼—se ¼ nw ¼ e ½ sw ¼ & sw ¼ se ¼	23	"	"	240	
22	Ne ¼—w ½ nw ¼—nw ¼ sw ¼ se ¼ sw ¼—n ½ se ¼ & sw ¼ se ¼	25	"	"	440	
23	W ½ ne ¼—nw ¼—w ½ se ¼—sw ¼	27	"	"	480	
	Forward				6175	.78

North of Base Line and West of 5th Principal Meridian

.... Railroad

List of Selections Made at U. S. Land Office, Crookston, Minn.

No.	PARTS OF SECTION	Sec.	Town.	Range	AREA Acres	AREA 100ths
					6175	.78
24	Ne ¼—w ½ se ¼ & Lots 2-4-6 & 7	29	142	36	337	.15
25	E ½—e ½ nw ¼ e ½ sw ¼ & Lots 3 & 4	31	"	"	337	.80
26	Ne ¼ nw ¼ & sw ¼	33	"	"	200	
27	N ½ ne ¼—sw ¼ ne ¼ e ½ sw ¼ & se ¼	35	"	"	360	
28	Se ¼ ne ¼—ne ¼ se ¼ & s ½ se ¼	17	143	36	160	
29	Ne ¼ ne ¼—Lot 4 w ½ se ¼ & se ¼ se ¼	31	"	"	200	.24
	Total				8,058	.57

963 DULUTH EXHIBIT "W." Offered in evidence at page 321, this record.

M. L. 114860.
"F"

S. L. M.
[10-cent I. R. stamp
Canceled.]

Department of the Interior,
F. C. L. General Land Office,
Washington, D. C., Feby. 6th, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of list No. 11 of second (2nd) indemnity lands relinquished by the Northern Pacific Railroad Company filed in the local office at St. Cloud, Minn., June 16, 1892, is a true and literal exemplification of the original list on file in this office.

[Seal United States
General Land Office]

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

964 1892=78265.

Relinquishment of Indemnity Lands
Selected by Northern Pacific R. R. Co.
U. S. Land Office. Form L. D. 153 3-92½ M. S.
Filed June 16, 1892. Approved............189..

Land Department
Northern Pacific Railroad Co.

In List No. 11 (2nd Indemnity) of selections of public Lands made by the Northern Pacific Railroad Company as enuring to it under grants of July 2, 1864, and May 31, 1870, in the Fergus Falls U. S. Land District, Minn.

965 Land Department
Northern Pacific Railroad Company,
In List No. 11 (2nd Indemnity).

State of Minnesota,
U. S. Land Office at Fergus Falls,
(Now St. Cloud) 189..

Northern Pacific Railroad Company,
Relinquishment of Second Indemnity Lands in Minnesota.

The Northern Pacific Railroad Company, by its Land Commissioner, Charles B. Lamborn, hereby relinquishes to the United States, all its right, title and interest in and to the tracts of land described in the list hereto attached, selected as indemnity lands by said Company under its grant by Act of Congress of July 2nd, 1864, and the joint resolution of Congress approved May 31st, 1870, in Indemnity Selection List No. 11, filed in the United States Land Office at Fergus Falls, Minnesota, on December 20th, 1886.

CHAS. B. LAMBORN,
Land Commissioner.

To the Honorable Commissioner,
of the General Land Office.

State of Minnesota,
County of Ramsey—ss.

On this 11th day of June, A. D. 1892, before me personally appeared Charles B. Lamborn, Land Commissioner of the Northern Pacific Railroad Company, to me known to be the person described in, and who signed the attached relinquishment.

Witness my hand and official seal the day and year last above written.

[Seal]
P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

966 North of Base Line and West of 5th Principal Meridian.

Northern Pacific Railroad.

List of Selections Made at U. S. Land Office, Fergus Falls (Now St. Cloud) Minn.

				AREA		
PARTS OF SECTION	Sec.	Town.	Range	Acres	100ths	REMARKS
Nw ¼ nw ¾ (or n ½ of lot 2)	31	133	45	20.14		St. P. M. & M. Main Line 10 mile limits.
W ½	11	133	46	320		do
W ½	15	"	"	320		do
Whole	21	"	"	640		do
Whole	23	"	"	640		do
E ½	25	"	"	320		do
Whole	27	"	"	640		do
W ½	29	"	"	320		do
N ½ ne ¼—n ½ nw ¼	33	"	"	160		do
N ½ ne ¼	35	"	"	80		do
Total				3460.14		Acres

967 DULUTH EXHIBIT "X." Offered in evidence at page 321, this record.

M. L. 114860.
"F"

S. L. M.
[10-cent I. R. stamp
Canceled.]

Department of the Interior,
F. C. L. General Land Office,
Washington, D. C., Feby. 6th, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of list No. 15 of second (2nd) indemnity lands relinquished by the Northern Pacific Railroad Company, filed in the local office at Duluth, Minn., April 11, 1893, is a true and literal exemplification of the original list on file in this office.

[Seal United States
General Land Office]

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

968 Relinquishment of Indemnity Lands,
Selected by Northern Pacific R. R. Co.

Filed............189.. Approved............189..

Land Department
Northern Pacific Railroad Co.

List No. 15 (2nd Indemnity) of selections of public lands made by the Northern Pacific Railroad Company as enuring to its under grants of July 2, 1864, and May 31, 1870, in the Duluth U. S. Land District, Minnesota.

Filed U. S. Land Office,
Duluth, Minn., April 11th, 1893.
MUNROE NICHOLS, Register.

969 Land Department
Northern Pacific Railroad Company
List No. 15 (2nd Indemnity).

State of Minnesota,
U. S. Land Office at Duluth.

Northern Pacific Railroad Company
Relinquishment of Second Indemnity Lands in Minnesota.

The Northern Pacific Railroad Company, by its Land Commissioner, Charles B. Lamborn, hereby relinquishes to the

United States, all its right, title and interest in and to the tracts of land described in the list hereto attached, selected as indemnity lands by said Company under its grant by Act of Congress of July 2nd, 1864, and the joint resolution of Congress approved May 1st, 1870, in Indemnity Selection List No. 15, filed in the United States Land Office at Duluth, Minnesota, on October 17th, 1883.

CHAS. B. LAMBORN,
Land Commissioner.

To the Honorable Commissioner
of the General Land Office.

State of Minnesota,
County of Ramsey—ss.

On this 10th day of April, A. D. 1893, before me personally appeared Charles B. Lamborn, Land Commissioner of the Northern Pacific Railroad Company, to me known to be the person described in, and who signed the attached relinquishment.

Witness my hand and official seal the day and year last above written.

[Seal]

P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

970 North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of Selections Made at U. S. Land Office, Duluth. Minnesota.

No.	PARTS OF SECTION	Sec.	Town.	Range	AREA Acres	AREA 100ths
1	Ne ¼—e ½ nw ¼—s ½ sw ¼ & se ¼	27	54	10	480	
2	Ne ¼ ne ¼—s ½ ne ¼ e ½ sw ¼ & se ¼	33	"	"	360	
3	N ½ nw ¼ nw ¼ ne ¼ & w ½ sw ¼	3	54	11	197	15
4	S ½ ne ¼ & n ½ se ¼	17	55	11	160	
5	Ne ¼—e ½ nw ¼ & s ½	33	"	"	560	
6	Se ¼ nw ¼—nw ¼ sw ¼ & Lot 6	5	54	12	98	15
7	Lots 9 & 11	7	"	"	47	94
8	Lot 1	19	"	"	35	63
9	E ½ nw ¼ & ne ¼ sw ¼	27	"	"	120	
10	S ½ ne ¼—ne ¼ sw ¼—Lots 3 & 4 n ½ se ¼ & se ¼ se ¼	7	55	12	330	71
11	N ½ ne ¼—sw ¼ ne ¼ & nw ¼	15	"	"	280	
12	Ne ¼ ne ¼—e ½ sw ¼—w ½ se ¼ se ¼ se ¼ & Lots 4, 5 & 7	17	"	"	353	75
13	E ½ ne ¼	21	"	"	80	
14	Lot 4	27	"	"	27	75
15	Se ¼ ne ¼	23	54	13	40	
16	N ½ ne ¼—s ½ nw ¼ & w ½ sw ¼	9	55	13	240	
17	W ½ ne ¼—e ½ nw ¼ n ½ sw ¼ & sw ¼ sw ¼	11	"	"	280	
18	N ½ sw ¼ & s ½ se ¼ sw ¼	13	"	"	120	
19	Ne ¼ ne ¼ & sw ¼ ne ¼	17	"	"	80	
20	Nw ¼ se ¼	21	"	"	40	
21	Nw ¼ ne ¼	23	"	"	40	
22	Ne ¼ sw ¼	29	"	"	40	
23	Se ¼ ne ¼ & se ¼ sw ¼	19	54	14	80	
24	Nw ¼ ne ¼	25	"	"	40	
25	Se ¼ nw ¼	9	55	14	40	
26	Ne ¼ sw ¼	15	"	"	40	
27	Ne ¼ sw ¼	21	"	"	40	
28	Se ¼ nw ¼	25	"	"	40	
29	Lots 1 & 2 & n ½ sw ¼ & se ¼	5	54	15	334	49
30	Se ¼ nw ¼	11	"	"	40	
31	Ne ¼ nw ¼—s ¼ nw ¼ & sw ¼	17	"	"	280	
	Forward				4945	57

971 North of Base Line and West of 4th Principal Meridian.

Northern Pacific

List of Selections Made at U. S. Land Office, Duluth, Minnesota.

No.	PARTS OF SECTION	Sec.	Town.	Range	AREA Acres 100ths
					4945.57
32	Lots 6-9 & 11	19	54	15	29.15
33	Sw ¼ se ¼	21	“	“	40
34	Lots 1 & 2 se ¼ sw ¼ & nw ¼ se ¼	17	55	15	140.63
35	Sw ¼ nw ¼ & Lots 3-4-5-6-7 & 8,	27	“	“	222.75
36	Nw ¼ ne ¼ & Lots 2-3-5-6 & 7 nw ¼ sw ¼ & s ½ se ¼	29	“	“	317.73
37	Lots 1 2-3-4-5 & 6 n ½ sw ¼ & se ¼ sw ¼ w ½ se ¼ & se ¼ se ¼	33	“	“	363.95
38	Lots 7 & 8 & se ¼ se ¼	31	“	“	86.27
39	N ½ n ½ sw ¼—se ¼ sw ¼ sw ¼ se ¼	35	“	“	480
40	S ½ ne ¼ s ½ nw ¼ nw ¼ sw ¼—se ¼ sw ¼ & n ½ se ¼	1	53	16	320
41	Lots 5 & 6	5	“	“	85
42	Nw ¼ ne ¼—ne ¼ nw ¼ & Lots 1-2-3-4-5-6 & 7	7	54	16	287.70
43	Se ¼ se ¼ & Lots 1 & 6	13	“	“	99.25
44	Sw ¼ sw ¼	17	“	“	40
45	Se ¼ ne ¼ & Lots 6 & 7	19	“	“	98.50
46	W ½ sw ¼ & Lot 6	21	“	“	112.75
47	Sw ¼ se ¼ & nw ¼ ne ¼	23	“	“	80
48	Sw ¼ ne ¼ & nw ¼ nw ¼ & nw ¼ se ¼	27	“	“	120
49	Se ¼ sw ¼ & Lot 1	29	“	“	74.25
50	E ½ sw ¼	33	“	“	80
51	Se ¼ sw ¼ & sw ¼ se ¼	13	55	16	80
52	N ½ ne ¼—sw ¼ ne ¼ e ½ nw ¼—Lots 1-3 & 4 e ½ sw ¼ & nw ¼ se¼	19	“	“	421.96
53	Sw ¼ ne ¼—se ¼ nw ¼ ne ¼ sw ¼ & nw ¼ se ¼	23	“	“	160
54	Sw ¼ sw ¼—se ¼ se ¼ & Lots 4-5-6 & 9	29	“	“	131.75
55	W ½ ne ¼—ne ¼ nw ¼ & w ½ se ¼	31	“	“	200
56	Se ¼ nw ¼ & Lot 2	33	“	“	74.50
57	S e ¼	3	54	17	160
58	Se ¼ se ¼ & Lots 2-5-6-7-8-9 & 10	11	“	“	290.25
	Forward				9591.96

972 North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of Selections Made at U. S. Land Office, Duluth, Minnesota.

No.	PARTS OF SECTION	Sec.	Town.	Range	AREA Acres 100ths
					9591.96
59	N ½ sw ¼—se ¼ Lots 1 & 2 3-4-6-7-8 & 9	13	54	17	496.75
60	S ½ ne ¼—s ½ nw ¼ ne ¼ sw ¼ & se ¼	23	55	17	360
61	Ne ¼—n ½ nw¼	25	“	“	240
	Total				10688.71 Acres

973 DULUTH EXHIBIT "Y." Offered in evidence at page 321, this record.

M. L. 114860.

S. L. M.

[10-cent I. R. Stamp Canceled]

"F"

Department of the Interior,
F. C. L. General Land Office,
Washington, D. C., Feby. 6th, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of list No. 36 of second (2nd) indemnity lands relinquished by the Northern Pacific Railroad Company filed in the local office at St. Cloud, Minn., June 16, 1892, is a true and literal exemplification of the original list on file in this office.

[Seal United States General Land Office]

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

974 1892=78265.

Relinquishment of Indemnity Lands
Selected by Northern Pacific R. R. Co.

Form L. D. 153. 3.92 ½ M. S.
Filed U. S. Land Office June 16, 1892.
St. Cloud, Minn.
Approved....................189..

Land Department
Northern Pacific Railroad Co.

Northern Pacific Railroad Co. in List No. 36 (2nd Indemnity) of selections of public lands made by the Northern Pacific Railroad Company as enuring to it under grants of July 2, 1864, and May 31, 1870, in the St. Cloud U. S. Land District, Minn.

975 Land Department
Northern Pacific Railroad Company.
In List No. 36 (2nd Indemnity).

State of Minnesota,
U. S. Land Office at St. Cloud.
..................1892.

Northern Pacific Railroad Company.
Relinquishment of Second Indemnity Lands in Minnesota.

The Northern Pacific Railroad Company, by its Land Commissioner, Charles B. Lamborn, hereby relinquishes to the United States, all its right, title and interest in and to the tracts of land described in the list hereto attached, selected as indemnity lands by said Company under its grant by act of Congress of July 2nd, 1864, and the joint resolution of Congress approved May 31st, 1870, in Indemnity Selection List No. 36, filed in the United States Land Office at St. Cloud, Minnesota, on December, ... 1886.

CHAS. B. LAMBORN,
Land Commissioner.

To the Honorable Commissioner,
of the General Land Office.

State of Minnesota,
County of Ramsey—ss.

On this 11th day of June, A. D. 1892, before me personally appeared Charles B. Lamborn, Land Commissioner of the Northern Pacific Railroad Company, to me known to be the person described in and who signed the attached relinquishment.

Witness my hand and official seal the day and year last above written.

[Seal] P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

976 North of Base Line and West of 5th Principal Meridian

Northern Pacific Railroad.

List of Selections Made at U. S. Land Office, St. Cloud, Minn.

				AREA		
PARTS OF SECTION	Sec.	Town.	Range	Acres	100ths	REMARKS
Se ¼	25	128	33	160		Hd. 10318, 3/31/79. Pat. 10/6/88
Ne ¼ nw ¼	7	128	34	40		Excepted from withdrawal on Def. Location C. E. 1046 11/10/79 Pat. 2/24/87
		Total		200 Acres		

977 DULUTH EXHIBIT "Z." Offered in evidence at page 321, this record.

M. L. 114860.
"F"

S. L. M.
[10-cent I. R. Stamp
Canceled]

Department of the Interior,
F. C. L. General Land Office,

Washington, D. C., Feby. 6th, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of list No. 18 of second (2nd) indemnity lands relinquished by the Northern Pacific Railroad Company, filed in the local office at St. Cloud, Minn., April 29, 1893, is a true and literal exemplification of the original list on file in this office.

[Seal United States
General Land Office]

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this Office, to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

978 Relinquishment of Indemnity Lands
Selected by Northern Pacific R. R. Co.

Form L. D. 153. 2-93. 250.S.

U. S. Land Office.
Filed Apr. 29, 1893. Approved..............189..

Land Department
Northern Pacific Railroad Co.

In List No. 18 (2nd Indemnity) of selections of public lands made by the Northern Pacific Railroad Company as enuring to it under grants of July 2, 1864, and May 31, 1870, in the St. Cloud U. S. Land District, Minnesota.

U. S. Land Offce,
Apr. 29, 1893.

Oct. 17, 1895, See to R. & R.
M. J. D.

St. Cloud, Minn.
A. BARTO, Register.

979

Land Department
Northern Pacific Railroad Company.
List No. 18 (2nd Indemnity).

State of Minnesota,
U. S. Land Office at St. Cloud,

Northern Pacific Railroad Company,
Relinquishment of Second Indemnity Lands in Minnesota.

The Northern Pacific Railroad Company, by its Land Commissioner, Charles B. Lamborn, hereby relinquishes to the United States, all its right, title and interest in and to the tracts of land described in the list hereto attached, selected as indemnity lands by said Company under its grant by act of Congress of July 2nd, 1864, and the joint resolution of Congress approved May 31st, 1870, in Indemnity Selection List No. 18, filed in the United States Land Office at St. Cloud, Minnesota, on May 17th, 1883.

CHAS. B. LAMBORN,
Land Commissioner.

To the Honorable Commissioner
of the General Land Office.

State of Minnesota,
County of Ramsey—ss.

On this 28th day of April, A. D. 1893, before me personally appeared Charled B. Lamborn, Land Commissioner of the Northern Pacific Railroad Company, to me known to be the person described in, and who signed the attached relinquishment.

Witness my hand and official seal the day and year last above written.

[Seal]

P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

980 North of Base Line and West of 4th Principal Meridian.

Northern Pacific Railroad.

List of Selections Made at U. S. Land Office, St. Cloud, Minnesota.

No.	PARTS OF SECTION	Sec.	Town.	Range	AREA	
					Acres	100ths
1	Lot 6	27	54	27	25	
	North of base line and west of 5th Principal Meridian.					
2	Lot 1	33	140	28	18	25
3	Lot 6	35	141	28	33	45
4	Ne ¼ sw ¼ & n ½ se ¼	"	"	"	120	
5	Ne ¼ nw ¼	5	138	29	38	04
6	Ne ¼ & ne ¼ nw ¼	7	"	"	200	
7	Lot 1	1	140	29	38	36
8	Lot 5	13	139	30	25	45
9	Lot 1	7	138	31	34	05
10	Ne ¼ se ¼	11	139	31	40	
11	Se ¼ se ¼	31	140	31	40	
12	Lots 4 & 9	33	"	"	29	
13	Se ¼ ne ¼	25	140	32	40	
	Total				681	60 Acres

981 DULUTH EXHIBIT "AA." Offered in evidence at page 321, this record.

M. L. 114860.

L. S. M.
[10-cent I. R. Stamp
Canceled]

"F"

Department of the Interior,
F. C. L. General Land Office,
Washington, D. C., Feby. 6th, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of List No. 20 of second (2nd) indemnity lands relinquished by the Northern Pacific Railroad Company, filed in the local office at St. Cloud, Minn., April 29, 1893, is a true and literal exemplification of the original list on file in this office.

[Seal United States General Land Office]

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this Office, to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

982 Relinquishment of Indemnity Lands
Selected by Northern Pacific R. R. Co.

U. S. Land Office. Form L. D. 153. 2-93. 250. S.
Filed Apr. 29, 1893. Approved..............189..

Land Department
Northern Pacific Railroad Co.

In List No. 20 (2nd Indemnity) of selections of public lands made by the Northern Pacific Railroad Company as enuring to it under grants of July 2, 1864, and May 31, 1870, in the St. Cloud U. S. Land District, Minnesota.

U. S. Land Office,
Apr. 29, 1893.
St. Cloud, Minn.
A. BARTO, Register.

983 Land Department,
Northern Pacific Railroad Company.
In List No. 20 (2nd Indemnity).

State of Minnesota,
U. S. Land Office at St. Cloud.

Northern Pacific Railroad Comany,
Relinquishment of Second Indemnity Lands in Minnesota.

The Northern Pacific Railroad Company, by its Land Commissioner, Charles B. Lamborn, hereby relinquishes to the United States, all its right, title and interest in and to the tracts of land described in the list hereto attached selected as indemnity lands by said Company under its grant by act of Congress of July 2nd, 1864, and the joint resolution of Congress approved May 31st, 1870, in Indemnity Selection List No. 20 filed in the United States Land Office, at St. Cloud, Minnesota, on October 17th, 1883.

CHAS. B. LAMBORN,
Land Commissioner.

To the Honorable Commissioner,
of the General Land Office.

State of Minnesota,
County of Ramsey—ss.

On this 28th day of April, A. D. 1893, before me personally appeared Charles B. Lamborn, Land Commissioner of the Northern Pacific Railroad Company, to me known to be the person described in, and who signed the attached relinquishment.

Witness my hand and official seal the day and year above written.

[Seal] P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

984 North of Base Line and West of 5th Principal Meridian.

Northern Pacific Railroad.

List of Selections Made at U. S. Land Office, St. Cloud, Minn.

No.	PARTS OF SECTION	Sec.	Twp.	Range	AREA Acres	AREA 100ths
1	Lots 2-5-6-7 & 8 se ¼ sw ¼ & se ¼	7	140	25	411	79
2	N ½ sw ¼—sw ¼ sw ¼ nw se ¼ & se ¼ se ¼	27	141	25	200	
3	E ½ ne ¼	11	140	26	80	
4	Sw ¼ ne ¼ & nw ¼ sw ¼	13	141	26	80	
5	W ½ nw ¼	15	"	"	80	
6	Lot 1	17	"	"	31	50
7	Nw ¼ ne ¼ & sw ¼ nw ¼	23	"	"	80	
8	Lots 3 & 4	25	"	"	100	
9	All	31	"	"	23	70
10	E ½ nw ¼	33	"	"	80	
11	Lot 1	25	142	26	14	75
12	N ½ se ¼	29	"	"	80	
13	N ½ se ¼—Lot 6	31	"	"	113	75
14	Se ¼ ne ¼—ne ¼ se ¼ & Lots 4 & 7	5	140	27	139	75
15	N ½ ne ¼ & sw ¼ sw ¼	9	"	"	120	
16	Ne ¼ ne ¼—nw ¼ sw ¼ se ¼ sw ¼ & nw ¼ se ¼	11	"	"	160	
17	Lots 3-9-11.	23	"	"	116	
18	Lots 2-3 & 4 & s ½ ne ¼ se ¼ sw ¼ & nw ¼ se ¼	1	141	27	200	16
19	N ½ sw ¼—sw ¼ sw ¼ & Lot 2	3	"	"	164	47
20	Sw ¼ ne ¼ & s ½ se ¼	11	"	"	120	
21	E ½ se & Lots 4 & 5	13	"	"	146	90
22	Sw ¼ se ¼ & Lot 3	15	"	"	61	90
23	Se ¼ ne ¼ & ne ¼ nw ¼ ne ¼ sw ¼—nw ¼ se ¼ & se ¼ se ¼	21	"	"	200	
24	Sw ¼ ne ¼ & Lot 1	23	"	"	79	65
25	W ½ ne ¼—se ¼ ne ¼ & ne ¼ nw ¼	25	"	"	160	
26	Sw ¼ sw ¼	33	"	"	40	
27	W ½ ne ¼—w ½ nw ¼ nw ¼ sw ¼ & n ½ se ¼	1	139	28	200	13
28	Lots 7 & 9	1	140	28	56	41
29	Sw ¼ ne ¼ & Lot 1	3	"	"	77	97
30	Lots 2-6-7-8 & 9 sw ¼ sw ¼ s ½ se ¼ & ne ¼ se ¼	5	"	"	353	47
31	Lots 1-2 & 3	7	"	"	33	20
32	Lot 7	11	"	"	2	
33	Lots 1-2-3 & 4	27	"	"	29	30
	Forward				4065	00

985

No.	PARTS OF SECTION	Sec.	Township	Range	AREA Acres	AREA Hundredths
					[illegible]	
34	Se ¼ sw ¼ & Lots 4 & 5	[illegible]	[illegible]	[illegible]	[illegible]	
35	Lots 6 & 7	[illegible]	[illegible]	[illegible]	[illegible]	
36	Se ¼ sw ¼ & sw ¼ se ¼	[illegible]	″	″	[illegible]	
37	N ½ ne ¼—nw ¼ nw ¼ w ½ sw ¼ & se ¼ se ¼	6	[illegible]	[illegible]	[illegible]	
38	W ½ nw ¼—ne ¼ nw ¼ n ½ sw ¼ & n ½ se ¼	7	″	″	[illegible]	
39	Lot 4	[illegible]	[illegible]	[illegible]	[illegible]	
40	Lots 1-2-3 & 8 sw ¼ ne ¼ & se ¼ nw ¼	[illegible]	″	″	[illegible]	
41	Lots 2-3-4 nw ¼ ne ¼ e ½ nw ¼ & sw ¼	[illegible]	″	″	[illegible]	
42	Lots 1 & 2—sw ¼ ne ¼ w ½—& ne ¼ se ¼	[illegible]	″	″	[illegible]	
43	Lots 3-9-10 & 11 s ½ sw ¼	[illegible]	″	″	[illegible]	
44	Lots 8-9-10 & 11 ne ¼ se ¼ & sw ¼ se ¼	[illegible]	[illegible]	[illegible]	[illegible]	
45	Lots 1-3-4 & 9 & w ½ ne ¼	[illegible]	″	″	[illegible]	
46	Lots 1-4-5-6-7-8-9 11-12 ne ¼ nw ¼ & se ¼ se ¼	[illegible]				
47	Nw ¼ nw ¼	[illegible]	″	″	[illegible]	
48	Lot 5	[illegible]	″	″	[illegible]	
49	N ½ ne ¼—sw ¼ ne ¼ n ½ sw ¼—se ¼ sw ¼ w ½ se ¼ & se ¼ se ¼	[illegible]	[illegible]	[illegible]	[illegible]	
50	E ½ se ¼ & Lot 1	[illegible]	[illegible]	[illegible]	[illegible]	
51	Ne ¼ ne ¼—s ½ ne ¼ & se ¼	[illegible]	″	″	[illegible]	
52	Se ¼ se ¼	[illegible]	″	″	[illegible]	
53	Lots 2 & 3	[illegible]	″	″	[illegible]	
54	W ½ sw ¼—ne ¼ se ¼ & Lot 3	[illegible]	″	″	[illegible]	
55	Se ¼ ne ¼ & e ½ se ¼	[illegible]	[illegible]	[illegible]	[illegible]	
56	Ne ¼ nw ¼—w ½ sw ¼ & se ¼ sw ¼	[illegible]	″	″	[illegible]	
57	Lots 3 & 4 se ¼ nw ¼ w ½ nw ¼—sw ¼ w ½ se ¼ & se ¼ se ¼	[illegible]	″	″	[illegible]	
58	Se ¼ sw ¼—sw ¼ se ¼ & e ½ se ¼	[illegible]			[illegible]	
59	Se ¼ sw ¼—sw ¼ se ¼ e ½ se ¼ & Lot 4	[illegible]	[illegible]	[illegible]	[illegible]	
60	Nw ¼ ne ¼ & Lot 5	[illegible]	″	″	[illegible]	
					[illegible]	

Forward.

No.	PARTS OF SECTION	Sec.	Town.	Range	AREA	
					Acres	100ths
					9225	59
61	S ½ sw ¼	11	138	31	80	
62	E ½ se ¼	1	139	31	80	
63	Lots 9 & 10	5	"	"	8	95
64	Whole	7	"	"	574	78
65	Lots 1 & 2 w ½ ne ¼ w ½ & nw ¼ se ¼	17	"	"	507	50
66	Ne ¼ ne ¼ & s ½ ne ¼	19	"	"	120	
67	Lot 1-2-3 & 4 se ¼ sw ¼ e ½ se ¼ & se ¼ ne ¼	31	"	"	293	67
68	Se ¼ nw ¼—n ½ sw ¼ & sw ¼ sw ¼	33	"	"	160	
69	N ½ nw ¼	29	140	31	80	
70	S ½ ne ¼—e ½ nw ¼ Lots 1-2-3 & 4 se ¼ sw ¼ & w ½ se ¼	31	"	"	435	03
71	Se ¼ ne ¼—ne ¼ se ¼ & Lots 3 & 7	33	"	"	148	
72	N ½ ne ¼ & sw ¼ ne ¼	35	"	"	120	
73	Lot 1—s ½ ne ¼—se ¼ nw ¼ n ½ sw ¼ se ¼ sw ¼ & se ¼	1	138	32	440	16
74	Ne ¼ se ¼	3	"	"	40	
75	Lots 1-2-3 & 4 sw ¼ ne ¼ s ½ nw ¼—ne ¼ sw ¼—nw ¼ se ¼	5	"	"	363	58
76	Whole	1	139	32	619	84
77	Whole	3	"	"	612	48
78	Whole	5	"	"	620	64
79	Whole	7	"	"	646	82
80	E ½ ne ¼—n ½ nw ¼ & se ¼ nw ¼ s ½	9	"	"	520	
81	Whole	11	"	"	640	
82	N ½ ne ¼—e ½ se ¼—w ½	13	"	"	480	
83	N ½—n ½ sw ¼ & n ½ se ¼	15	"	"	480	
84	Ne ¼—n ½ nw ¼ Lots 1 & 2 & se ¼	17	"	"	459	55
85	Whole	19	"	"	652	
86	Ne ¼—e ½ nw ¼—n ¼ sw ¼ sw ¼ sw ¼ & n ½ se ¼—sw ¼ se ¼	27	"	"	480	
87	Nw ¼ sw ¼	23	"	"	40	
88	E ½ ne ¼—sw ¼ ne ¼ n ½ nw ¼—sw ¼ nw ¼ n ½ sw ¼—se ¼ sw ¼ & se ¼	29	"	"	520	
89	E ½ se ¼	25	"	"	80	
	Forward.				19529	34

No.	PARTS OF SECTION	Sec.	Town.	Range	AREA Acres 100ths
					29529.34
90	Ne ¼ e ½ nw ¼—Lots 1-2-3 & 4 Ne ¼ sw ¼—n ½ se ¼ & sw ¼ se ¼	31	139	32	570.64
91	Nw ¼ nw ¼	33	"	"	40
92	S ½ sw ¼ & s ½ se ¼	15	140	32	160
93	Lots 4-5-6 & 8	19	"	"	131.09
94	Whole	21	"	"	640
95	S ½	23	"	"	320
96	Ne ¼ ne ¼ & w ½	25	"	"	360
97	Whole	27	"	"	640
98	Whole	29	"	"	600.90
99	Se ¼ ne ¼—Lot 1 & 7 se ¼	31	"	"	264.64
100	Whole	33	"	"	640
101	Whole	35	"	"	640
102	Lots 1-2 & 3 sw ¼ ne ¼ s ½ nw ¼—w ½ se ¼ & sw ¼	1	139	33	477.75
103	N ½ & Lots 1-3-4-5 & 6	11	"	"	419.25
104	Whole	13	"	"	640
105	Whole	25	"	"	640
106	N ½ se ¼—e ½ sw ¼	1	140	33	160
107	S ½ nw ¼	3	"	"	80
108	Lots 3-4-5-9-10 & 11 & sw ¼ sw ¼	5	"	"	151.68
109	Ne ¼ sw ¼—sw ¼ sw ¼ se ¼	23	"	"	240
110	N ½ ne ¼—n ½ nw ¼ n ½ sw ¼ & se ¼ sw ¼	25	"	"	280
111	N ½ ne ¼	27	"	"	80
112	N ½ sw ¼—sw ¼ sw ¼ n ½ se ¼ & se ¼ se ¼	29	"	"	240
113	S ½ sw ¼	33	"	"	80
114	N ½ ne ¼	31	141	33	80
115	Lots 2-3-4-5-7 & 8 w ½ nw ¼—w ½ sw ¼ & se ¼ sw ¼	33	"	"	432.80
116	Sw ¼	5	141	34	160
117	Lot 6	7	"	"	48.50
118	Sw ¼	15	"	"	160
119	Lots 5-6 & 7	19	"	"	78.05
120	S ½ sw ¼ & sw ¼ se ¼	29	"	"	120
121	Lots 4-6 & 7 s ½ nw ¼ sw ¼ & sw ¼ se ¼	5	141	35	396.26
					29500.90

988

					AREA	
No.	PARTS OF SECTION	Sec.	Town.	Range	Acres	100ths
					29500	90
122	Whole	7	141	35	584	80
123	Sw ¼ ne ¼—se ¼ nw ¼ ne ¼ sw ¼ sw ¼ se ¼ Lot 5	9	"	"	183	75
124	Sw ¼ ne ¼—se ¼ nw ¼ w ½ nw ¼	17	"	"	160	
125	N ½ ne ¼—se ¼ ne ¼ e ½ nw ¼—Lots 1 & 2 e ½ sw ¼ & se ¼	19	"	"	498	40
126	Nw ¼ nw ¼ & s ½ nw ¼	27	"	"	120	
127	Nw ¼ sw ¼ & Lot 2 n ½ nw ¼—sw ¼ nw ¼	29	"	"	189	
128	S ½ ne ¼—ne ¼ nw ¼ & ne ¼ se ¼	31	"	"	160	
129	W ½ nw ¼	33	"	"	80	
130	Nw ¼ nw ¼—n ½ se ¼	35	"	"	120	
131	Lot 4 sw ¼ nw ¼ & sw ¼ sw ¼	5	142	35	114	17
132	Se ¼ nw¼—w ½ sw ¼	9	"	"	120	
133	Ne ¼ nw ¼ & s ½ nw ¼ w ½ sw ¼ & sw ¼ se ¼	15	"	"	240	
134	N ½—½ sw ¼—sw ¼ sw ¼ e ½ se ¼	17	"	"	520	
135	Whole	19	"	"	540	85
136	Ne ¼ nw ¼ & s ½ sw ¼	21	"	"	120	
137	W ½ ne ¼	27	"	"	80	
138	Sw ¼ ne ¼—s ½ nw ¼ nw ¼ nw ¼ & s ½	29	"	"	480	
139	Sw ¼ ne ¼—w ½ se ¼ & Lot 3	31	"	"	149	
140	N ½ sw ¼ & nw ¼ se ¼	35	"	"	120	
	Total				34080	87 Acres.

989 DULUTH EXHIBIT "BB." Offered in evidence at page 322, this record.

M. L. 115541.

S. L. M.
[10-cent I. R. Stamp
Canceled]

"F"

Department of the Interior,
F. C. L. General Land Office,
Washington, D. C., Feby. 27, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of list No. 18, of first indemnity lands relinquished by the Northern Pacific Railroad Comany, filed in the local office at St. Cloud, Minn., May 10, 1892, is a true and literal exemplification of the original on file in this office.

[Seal United States General Land Office]

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

990 May 10, 1892=61434.

Relinquishment of Indemnity Lands
Selected by Northern Pacific R. R. Co.

Approved .... 189..

Land Department
Northern Pacific Railroad Co.

In List No. 18 (1st. Indemnity) of selections of Public Lands made by the Northern Pacific Railroad Company as enuring to it under Grants of July 2, 1864, and May 31, 1870, in the Crookston U. S. Land District, Minn.

U. S. Land Office, Crookston, Minn.

Received and filed May 10, 1892.

HUGH THOMPSON,
Register.

991 Land Department.
Northern Pacific Railroad Company.
In List No. 18 (1st Indemnity).

State of Minnesota,
U. S. Land Office at Crookston.

Northern Pacific Railroad Company.
Relinquishment of First Indemnity Lands in Minnesota.

The Northern Pacific Railroad Company, by its Land Commissioner, Charles B. Lamborn, hereby relinquishes to the United States, all its right, title and interest in and to the tracts of land described in the list hereto attached, selected as indemnity lands by said Company under its grant by Act of Congress of July 2nd, 1864, in Indemnity Selection List No. 18, filed in the United States Land Office at Crookston, Minnesota, on June 17th A. D. 1885.

CHAS. B. LAMBORN,
Land Commissioner.

To the Honorable Commissioner
of the General Land Office.

State of Minnesota,
County of Ramsey—ss.

On this 9th day of May, A. D. 1892, before me personally appeared Charles B. Lamborn, Land Commissioner of the Northern Pacific Railroad Company, to me known to be the person described in, and who signed the attached relinquishment.

Witness my hand and official seal the day and year last above written.

[Seal.]

P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

North of Base Line and West of 5th Principal Meridian.

Northern Pacific Railroad.

List of Selections Made at U. S. Land Office, Crookston, Minn.

PARTS OF SECTION	Sec.	Town.	Range	AREA Acres	100ths	REMARKS
Lot 4—se ¼ sw¼	19	143	44	79	03	Swamp Pat.
Nw ¼ nw ¼	23	"	"	40		"
W ½ nw ¼	35	144	44	80		H'd. 1512, 7/16/78, Pat. 10/11/88.
Ne ¼ sw ¼—nw ¼ se ¼	27	144	46	80		Swamp Pat.
Sw ¼	3	143	48	160		Sold 7/25/70. Pat. 9/1/71.
Frl. n ½	5	"	"	313	22	Sold Apr. 7/70. C. E. 561.
S ½	"	"	"	320		State Internal Import Sel. 1/28/68.
Ne ¼	7	"	"	160		State Internal Impot. Sel. 1/28/68.
Frl. w ½	"	"	"	296	80	Sold Apl. 7-70 C. E. 71.
Se ¼	"	"	"	160		State Internal Impot. Sel. 1/28/68.
Ne ¼	9	"	"	160		Sold 3/12/70, A. C. S. 213. Pat. 4/1/71.
Nw ¼	"	"	"	160		Sold 3/12/70, A. C. S. 212. Pat. 4/1/71.
Sw ¼	"	"	"	160		Sold 3/12/70, A. C. S. 214. Pat. 4/1/71.
Se ¼	"	"	"	160		Sold 3/12/70, A. C. S. 215. Pat. 4/1/71.
Ne ¼	11	"	"	160		Sold 7/23/70, Wt. 124.
Nw ¼	"	"	"	160		Sold 7/23/70, Wt. 119.
S ½	"	"	"	320		Sold 4/19/70, C. E 641. Pat. 4/1/71.
Ne ¼	13	"	"	160		Sold 4/19/70, C. E. 640. Pat. 4/1/71.
Nw ¼	"	"	"	160		Sold 4/14/70, Wt. 65. Pat. 6/5/71
S ½	"	"	"	320		State Internal Impot. Sel. 1/28/68.
Ne ¼	15	"	"	160		Sold 4/7/70, C. E. 565.
Nw ¼	"	"	"	160		Sold 3/2/70, A. C. S. 217. Pat. 4/1/71.
Sw ¼	"	"	"	160		Sold 3/2/70, A. C. S. 216. Pat. 4/1/71.
Se ¼	"	"	"	160		Sold 3/2/70, A. C. S. 218. Pat. 4/1/71.
Ne ¼	17	"	"	160		State Internal Impot. Sel. 1/28/68.
Nw ¼	"	"	"	160		Sold 5/21/70, C. E. 739. Pat. 9/1/71.
Sw ¼	"	"	"	160		Sold 7/23/70, Wt. 114.
Se ¼	"	"	"	160		State Internal Impot. Sel. 1/28/68.
Ne ¼	19	"	"	160		Sold 7/23/70, Wt. 115.
Frl. w ½	"	"	"	306	48	Sold 4/7/70, C. E. 569.
Se ¼	"	"	"	160		Sold 7/23/70, Wt. 116.
Ne ¼	23	"	"	160		Sold 4/19/70, C. E. 639.
W ½	"	"	"	320		State Internal Impot. Sel. 1/28/68.
W ½ nw ¼	29	"	"	80		Sold 9/27/70, C. E. 1049. Pat. 9/1/71.

PARTS OF SECTION	Sec.	Town.	Range	AREA		REMARKS
				Acres	100ths	
Sw ¼	"	"	"	160		Sold 9/26/70, C. E. 1035. Pat. 9/1/71.
Sw ¼ se ¼	"	"	"	40		Sold 9/27/70, C. E. 1047. Pat. 9/1/71.
N ½ ne ¼	31	"	"	80		Sold 3/8/70, C. E. 511. Pat. 4/1/71.
Frl. n ½ nw ¼	"	"	"	78.59		Sold 3/8/70, C. E. 512. Pat. 4/1/71.
N ½ ne ¼	33	"	"	80		Sold 9/27/70, C. E. 1054. Pat. 9/1/71.
N ½ nw ¼	"	"	"	80		State Internal Impot. Sel. 1/28/68.
For'd				6594.12		
993						
For'd				6594.12		
Sw ¼ nw ¼	9	144	48	40		Swamp Pat.
Nw ¼ ne ¼	19	"	48	40		Occupied at general Route and definite location. H'd 8438, 2/14/83—F. P. 2/15/90.
Lots 1-2-3 & 4	1	143	49	163.36		Sold 4/9/70, C. E. 597. Pat. 4/1/71
Ne ¼	"	"	"	160		Sold 2/18/70, A. C. S. 191, Pat. 4/1/71.
Se ¼	"	"	"	160		Sold 2/12/70, A. C. S. 163. Pat. 4/1/71
Lots 1 & 2	13	"	"	97		Sold 1/11/70, Wt. 41. Pat. 11/19/70
Lots 3 & 4—sw ¼ se ¼	"	"	"	118.20		C. E. 541, 3/19/70. Pat. 4/1/71
Lots 5-6 & 7	"	"	"	104.35		Wt. 40, 1/11/70. Pat. 11/19/70
N ½ ne ¼—se ¼ ne ¼	"	"	"	120		Sold 3/19/70, C. E. 542. Pat. 4/1/71.
E ½ se ¼	"	"	"	80		Sold 2/9/70, C. E. 470. Pat. 4/1/71.
Lots 1-2-3-4 & 5	25	"	"	198.08		Sold 1/11/70, Wt. 38. Pat. 11/19/70.
Ne ¼ ne ¼	"	"	"	40		Sold 3/19/70, C. E. 535. Pat. 4/1/71
Ne ¼	13	144	49	160		Sold 3/8/70, A. C. S. 202. Pat. 4/1/71
Nw ¼	"	"	"	160		Sold 3/8/70, A. C. S. 205. Pat. 4/1/71
Sw ¼	"	"	"	160		Sold 3/21/70. A. C. S. 225. Pat. 4/1/71
Se ¼	"	"	"	160		Sold 4/9/72, C. E. 599. Pat. 4/1/71
Lot 1.—e ½ nw ¼	25	"	"	123.46		Sold 4/7/70, C. E. 578. Pat. 4/1/71
Lots 2 & 3—e ½ sw ¼	"	"	"	150.87		Sold 3/21/70, A. C. S. 221. Pat. 4/1/71
Ne ¼	"	"	"	160		Sold 3/21/70, A. C. S. 219. Pat. 4/1/71
Se ¼	"	"	"	160		Sold 3/21/70, A. C. S. 220. Pat. 4/1/71
Total				9149.44 Acres.		

994 DULUTH EXHIBIT "CC".—Offered in evidence at page 322, this record.

M. L. 115541. S. L. M.

"F" [10-cent I. R. stamp Canceled.]

Department of the Interior,
F. C. L. General Land Office,
Washington, D. C., Feby. 27, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of list No. 4, of first indemnity lands relinquished by the Northern Pacific Railroad Company, filed in the local office at St. Cloud, Minn., May 10, 1892, is a true and literal exemplification of the original on file in this office.

[Seal United States General Land Office]

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

995 Co's files.
May 10, 1892=61434.

Relinquishment of Indemnity Lands
Selected by Northern Pacific R. R. Co.

Filed U. S. Land Office, May 10, 1892,
St. Cloud, Minn.
Approved .... 189..

Land Department
Northern Pacific Railroad Co.

In List No. 4 (1st. Indemnity) of selections of Public Lands made by the Northern Pacific Railroad Company as enuring to it under Grants of July 2, 1864, and May 31, 1870, in the Fergus Falls U. S. Land District, Minn.

Posted Ap'l 20/96.
M. P. W.

996 Land Department
Northern Pacific Railroad Company.
In List No. 4 (1st Indemnity.)

State of Minnesota,
U. S. Land Office at Fergus Falls.
(Now St. Cloud.)

Northern Pacific Railroad Company.
Relinquishment of First Indemnity Lands in Minnesota.

The Northern Pacific Railroad Company, by its Land Commissioner, Charles B. Lamborn, hereby relinquishes to the United States, all its right, title and interest in and to the tracts of land described in the list hereto attached, selected as indemnity lands by said Company under its grant by Act of Congress of July 2nd, 1864, in Indemnity Selection List No. 4, filed in the United States Land Office at Fergus Falls, Minnesota on June 27th A. D. 1883.

CHAS. B. LAMBORN,
Land Commissioner.

To the Honorable Commissioner
of the General Land Office.

State of Minnesota,
County of Ramsey—ss.

On this 9th day of May, A. D. 1892, before me personally appeared Charles B. Lamborn, Land Commissioner of the Northern Pacific Railroad Company, to me known to be the person described in, and who signed the attached relinquishment.

Witness my hand and official seal the day and year last above written.

[Seal.]
P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

997 North of Base Line and West of 5th Principal Meridian.

Northern Pacific Railroad.

List of Selections Made at U. S. Land Office, Fergus Falls, Minn.

PARTS OF SECTION	Sec.	Town.	Range	AREA Acres	AREA 100ths	REMARKS
S ½ se ¼	9	131	37	80		Hd. 8205 5/28/84—Pat. 3/13/90
Nw ¼ nw ¼	11	"	"	40		D. S. 3947 12/1/85. Pat. 1/23/90
Lot 8 & se ¼ se ¼	17	"	"	63.55		D. S. 1193, 5/15/72. Set 6/20 70. Pat. 9/30/84
Lot 7—ne ¼ sw ¼—sw ¼ sw ¼	21	"	"	100.30		D. S. 1249, 6/3/72. Set 9/26 68. F. P. 5/10/85
Nw ¼ nw ¼	"	"	"	40		D. S. 1205, 5/20. Set 3/4/70. F. P. 5/27/82
N ½ nw ¼	"	"	"	80		P. D. S. 1203. 5/18/72. Set. 6/15/68. F. P. 1/17/88
Se ¼	1	131	38	160		P. D. L. 1288. 1/19/72. Set. 5/20/71. Pat. 9/17/90
Lot 3—sw ¼ ne ¼—se ¼ nw ¼—ne ¼ sw ¼	29	"	"	158.75		P. D. S. 1177. 5/12/72. Set. 7/5/71. Pat. 5/13/90
Se ¼ se ¼	21	136	43	40		Hd. 8785, 12/1/87. Pat. 5/13/90
Total				762.60		Acres.

998 DULUTH EXHIBIT "DD".—Offered in evidence at page 322, this record.

M. L. 115541. S. L. M.

"F"

[10-cent I. R. stamp Canceled.]

Department of the Interior,
F. C. L. General Land Office,
Washington, D. C., Feby. 27, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of list No. 7, of first indemnity lands relinquished by the Northern Pacific Railroad Company, filed in the local office at St. Cloud, Minn., May 10, 1892, is a true and literal exemplification of the original on file in this office.

[Seal United States General Land Office]

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

999 Co's files.

May 10, 1892=61434.

Relinquishment of Indemnity Lands
Selected by Northern Pacific R. R. Co.

Filed U. S. Land Office, May 10, 1892,
St. Cloud, Minn.

Approved .... 189..

Land Department
Northern Pacific Railroad Co.

In List No. 7 (1st. Indemnity) of selections of Public Lands made by the Northern Pacific Railroad Company as enuring to it under Grants of July 2, 1864, and May 31, 1870, in the Fergus Falls, U. S. Land District, Minn.

Posted April 21/96.
M. P. W.

1000 Land Department
Northern Pacific Railroad Company.

In List No. 7 (1st Indemnity).

State of Minnesota,
U. S. Land Office at Fergus Falls.
(Now St. Cloud.)

Northern Pacific Railroad Company.
Relinquishment of First Indemnity Lands in Minnesota.

The Northern Pacific Railroad Company, by its Land Commissioner, Charles B. Lamborn, hereby relinquishes to the United States, all its right, title and interest in and to the tracts of land described in the list hereto attached, selected as indemnity lands by said Company under its grant by Act of Congress of July 2nd. 1864, in Indemnity Selection List No. 7, filed in the United States Land Office at Fergus Falls, Minnesota, on October 29th A. D. 1883.

CHAS. B. LAMBORN,
Land Commissioner.

To the Honorable Commissioner
of the General Land Office.

State of Minnesota,
County of Ramsey—ss.

On this 9th day of May, A. D. 1892, before me personally appeared Charles B. Lamborn, Land Commissioner of the Northern Pacific Railroad Company, to me known to be the person described in, and who signed the attached relinquishment.

Witness my hand and official seal the day and year last above written.

[Seal.] P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

1001 North of Base Line and West of 5th Principal Meridian.

Northern Pacific Railroad.

List of Selections Made at U. S. Land Office, Fergus Falls, Minn.

PARTS OF SECTION	Sec.	Town.	Range	AREA		REMARKS.
				Acres	100ths	
N ½ se ¼ sw ¼ se ¼	7	130	38	120		Hd. 2286, 7/24/72. Pat. 2/28/85
E ½ se ¼	3	130	39	80		Hd. 8239, 7/9/84. Pat. 5/13/90
Lot 2,—n ½ ne ¼ se ¼ ne ¼	11	131	40	163.	75	Hd. 8071, 11/8/83. Pat. 12/8/90
Se ¼	13	"	"	160		H'd 14472, 6/6/89. Pat. 12/8/90
Lots 3 & 4—e ½ sw ¼	31	132	40	149		Excepted from withdrawal on definite location. Hd. 8058, 10/29/83, F. P. 12/10/89.
N ½ se ¼—se ¼ se ¼	"	"	"	120		H'd 8057, 10/29/83, F. P. 12/10/89.
Se ¼ sw ¼	1	131	41	40		Excepted from withdrawal on definite location. H'd 8073, 11/9/83, Appd. Pat. 3/15/90
Se ¼ sw ¼	13	132	41	40		H'd 1891, 11/15/71, F. P. 6/23/87. Pat. 3/31/88
Lot 1	33	"	"	51.	10	H'd 1516, 6/13/71, F. P. 9/29/76. Pat. 12/30/78
Lot 6	31	133	41	55.	75	H'd 8507 1/6/86. Pat. 1/20/91
N ½ ne ¼	27	133	42	80		Excepted from withdrawal on definite location. Hd 6134, 4/13/80, F. P. 5/19/85
N ½ nw ¼	"	"	"	80		Excepted from withdrawal on definite location. D. L. 1045, 5/17/73, H'd 8146, 2/29/84, F. P. 5/19/85
N ½ sw ¼—sw ¼ sw ¼	"	"	"	120		H'd 7851, 4/10/83. Pat. 10/21/90
Sw ¼	3	134	43	160		Excepted from withdrawal on definite by Knute Johnson application to enter, July 23/85
Sw ¼ nw ¼—n ½ sw ¼—sw ¼ sw ¼	3	135	44	160		Occupied st. date General Route Bjorn P. Gjuve, H'd, July 10-83
S ½ sw ¼	5	"	"	80		H'd 8256, 8/4/84. Pat. 12/10/85
Sw ¼	25	135	45	160		H'd 1925, 1/4/72. Pat. 10/18/88
Total				1819.	60	Acres.

1002 DULUTH EXHIBIT "EE".—Offered in evidence at page 322, this record.

M. L. 115541.

S. L. M.

"F"

[10-cent I. R. stamp Canceled.]

Department of the Interior,
General Land Office,
Washington, D. C., Feby. 27, 1901.

F. C. L.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of list No. 25, of first indemnity lands relinquished by the Northern Pacific Railroad Company, filed in the local office at St. Cloud, Minn., May 10, 1892, is a true and literal exemplification of the original on file in this office.

[Seal United States General Land Office]

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

1003 May 10, 1892=61434.

Relinquishment of Indemnity Lands
Selected by Northern Pacific R. R. Co.

Filed U. S. Land Office, May 10, 1892,
St. Cloud, Minn.

Approved .... 189..

Land Department

Northern Pacific Railroad Co.

In List No. 25 (1st. Indemnity) of selections of Public Lands made by the Northern Pacific Railroad Company as enuring to it under Grants of July 2, 1864, and May 31, 1870, in the St. Cloud U. S. Land District, Minn.

Posted Apl. 20/96.
M. P. W.

1004 Land Department
Northern Pacific Railroad Company.
In List No. 25 (1st Indemnity).

State of Minnesota,
U. S. Land Office at St. Cloud.

Northern Pacific Railroad Company.
Relinquishment of First Indemnity Lands in Minnesota.

The Northern Pacific Railroad Company, by its Land Commissioner, Charles B. Lamborn, hereby relinquishes to the United States, all its right, title and interest in and to the tracts of land described in the list hereto attached, selected as indemnity lands by said Company under its grant by Act of Congress of July 2nd, 1864, in Indemnity Selection List No. 25, filed in the United States Land Office at St. Cloud, Minnesota, on November 7th A. D. 1883.

CHAS. B. LAMBORN,
Land Commissioner.

To the Honorable Commissioner
of the General Land Office.

State of Minnesota,
County of Ramsey—ss.

On this 9th day of May, A. D. 1892, before me personally appeared Charles B. Lamborn, Land Commissioner of the Northern Pacific Railroad Company, to me known to be the person described in, and who signed the attached relinquishment.

Witness my hand and official seal the day and year last above written.

[Seal.]

P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

1005 North of Base Line and West of 5th Principal Meridian.

Northern Pacific Railroad.

List of Selections Made at U. S. Land Office, St. Cloud, Minn.

PARTS OF SECTION	Sec.	Town.	Range.	AREA Acres	AREA 100ths	REMARKS
E ½ sw ¼—w ½ se ¼	1	139	35	160		Hd. 13995, 11-16-86. Pat. 6-25-90.
sw ¼ ne ¼—se ¼ nw ¼—ne ¼ sw ¼—nw ¼ se ¼	9	"	"	160		Excepted from withdrawal on Definite Location. Hd. 13991, 11-4-86, F. C. 9-3-90. (H. D. May, 9-86.)
W ½ ne ¼—e ½ nw ¼	15	"	"	160		P. D. S. 3020, 5-6-75. Pat. 3-3-90.
N ½ sw ¼—sw ¼ nw ¼	"	"	"	120		Hd. 13997, 11-29-86. Pat. 6-25-90.
sw ¼ ne ¼, se ¼ nw ¼—ne ¼ sw ¼—nw ¼ se ¼	19	"	"	160		Hd. 13934, 5-10-87. Pat. 6-10-90.
sw ¼ ne ¼—se ¼ nw ¼—ne ¼ sw ¼—nw ¼ se ¼	29	"	"	160		Hd. 13939, 8-12-86. Pat. 10-6-90.
		Total		920 Acres		

1006 DULUTH EXHIBIT "YY".—Offered in evidence at page 822, this record.

M. L. 16341. S. L. M.

"Y" [Stamp U. S. R. stamp Cancelled.]

Department of the Interior,
F. C. L. General Land Office,
Washington, D. C., Feby. 27, 1899.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of list No. 9 of first indemnity lands relinquished by the Northern Pacific Railroad Company, filed in the local office at St. Cloud, Minn., May 20, 1892, is a true and literal exemplification of the original on file in this office.

[Seal United States General Land Office.]

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

1007 Co's files.

May 10, 1892=61434.

Relinquishment of Indemnity Lands
Selected by Northern Pacific R. R. Co.

Filed U. S. Land Office, May 10, 1892,
St. Cloud, Minn.

Approved .... 189 .

Land Department
Northern Pacific Railroad Co.

In List No. 9 (1st. Indemnity) of selections of Public Lands made by the Northern Pacific Railroad Company as enuring to it under Grants of July 2, 1864, and May 31, 1870, in the Fergus Falls U. S. Land District, Minn.

1008 Land Department
Northern Pacific Railroad Company.
In List No. 9 (1st Indemnity.)

State of Minnesota,
U. S. Land Office at Fergus Falls.
(Now St. Cloud.)

Northern Pacific Railroad Company.
Relinquishment of First Indemnity Lands in Minnesota.

The Northern Pacific Railroad Company, by its Land Commissioner, Charles B. Lamborn, hereby relinquishes to the United States, all its right, title and interest in and to the tracts of land described in the list hereto attached, selected as indemnity lands by said Company under its grant by Act of Congress of July 2nd, 1864, in Indemnity Selection List No. 9, filed in the United States Land Office at Fergus Falls, Minnesota on June 19th, A. D. 1885.

CHAS. B. LAMBORN,
Land Commissioner.

To the Honorable Commissioner
of the General Land Office.

State of Minnesota,
County of Ramsey—ss.

On this 9th day of May, A. D. 1892, before me personally appeared Charles B. Lamborn, Land Commissioner of the Northern Pacific Railroad Company, to me known to be the person described in, and who signed the attached relinquishment.

Witness my hand and official seal the day and year last above written.

[Seal.]

P. P. STARIN,
Notary Public, Ramsey County, Minnesota.

1009 North of Base Line and West of 5th Principal Meridian.

Northern Pacific Railroad.

List of Selections Made at U. S. Land Office, Fergus Falls, Minn.

PARTS OF SECTION	Sec.	Town.	Range	AREA		REMARKS
				Acres	100ths	
S ½ sw ¼—sw ¼ se¼	5	132	39	120		Hd. 3589. 7/3/77. Pat. 11/26/83.
Lots 1-2 & 6—se ¼ ne ¼	1	132	40	158.69		Hd. 34, 3/3/69. Pat. 9/10/75.
Lot 3 & e ½ sw ¼	"	"	"	110.90		Hd. 284, 6/26/69. Pat. 9/10/75.
Lot 4 & sw ¼ sw ¼	"	"	"	85.25		Hd. 20, 2/12/69. Pat. 9/10/75.
Lot 5—sw ¼ ne ¼—nw ¼ se ¼	"	"	"	118.70		Hd. 19, 2/12/69. Pat. 9/10/75.
Lots 1 & 2—sw ¼ se ¼	3	"	"	150.50		Hd. 268, 6/1/69. Pat. 4/25/73.
Lots 3 & 4	"	"	"	80.48		Hd. 509, 12/4/69. Pat. 9/15/73.
S ½ nw ¼—w ½ sw ¼	"	"	"	160		Hd. 645½, 4/27/70. Pat. 9/10/75.
Lots 1 & 2—s ½ ne ¼	5	"	"	165.97		Hd. 481, 11/6/69. Pat. 9/10/75.
S ½ sw ¼	"	"	"	80		Hd. 707, 5/31/70. Pat. 8/30/76.
Se ¼	"	"	"	160		Hd. 628, 4/14/70. Pat. 8/30/76.
Se ¼ ne ¼	7	"	"	40		Hd. 484, 11/6/69. Pat. 3/10/76.
E ½ se ¼	"	"	"	80		Hd. 697, 5/28/70. Pat. 8/30/76.
E ½ ne ¼	9	"	"	80		Hd. 922, 10/31/70. Pat. 2/25/87.
W ½ ne ¼—e ½ nw ¼	"	"	"	160		Hd. 483. 11/6/69. Pat. 9/10/75.
W ½ nw ¼	"	"	"	80		Hd. 478, 11/6/69. Pat. 9/10/75.
Sw ¼	"	"	"	160		Hd. 302. 7/3/69. Pat. 3/10/76.
Se ¼	"	"	"	160		Excepted from withdrawal on Genl Route and definite location. Hd. 3171, 4/26/76. Appd. for, Pat. 2/8/84.
Lot 1—ne ¼ ne ¼	11	"	"	76		Hd. 35, 3/3/69. Pat. 3/10/74.
Lot 2—nw ¼ ne ¼	"	"	"	83		Hd. 201, 6/2/69. Pat. 1/5/76.
Lots 2—3 & 4 nw ¼ se ¼	17	133	40	140.30		Hd. 3894, 6/15/67. Pat. 11/15/73.
E ½ se ¼	"	"	"	80		C. E. 881. 7/8/70. Pat. 9/1/71.
Ne ¼	19	"	"	160		A. C. S. 2701, 10/15/67. Pat. 10/15/67.
Se ¼	"	"	"	160		A. C. S. 271, 10/15/69. Pat. 10/15/67.
Lots 1 & 2—ne ¼ nw ¼	21	"	"	135.30		A. C. S. 2700. Oct. 15/67.
Lots 3-4 & 5—ne ¼ se ¼	"	"	"	130.95		Wt. 3927. Oct. 16/67.
Lots 2 & 3 w ½ sw ¼	27	"	"	163.95		Hd. 3063. 12/16/75. Pat. 3/24/88.
Lots 1 & 2—w ½ se ¼	29	"	"	153.60		A. C. S. 2054. 6/22/67. Pat. 10/1/68.
Ne ¼	"	"	"	160		A. C. S. 2056. 6/22/67. Pat. 10/1/68.
Nw ¼	"	"	"	160		A. C. S. 2710. 10/15/67.
Lot 4	31	"	"	8.05		C. E. 4250, Sept. 24/68.
Lot 5	"	"	"	22.15		C. E. 4251, Sept. 24/68.
Lot 6—se ¼ ne ¼	"	"	"	67.15		Wt. 4063. 10/30/68.
Lot 7	"	"	"	31.15		C. E. 3985. 4/28/68.
Lots 3 & 4	33	"	"	68.10		Wt. 3883, 6/22/67. Pat. 8/1/68.

PARTS OF SECTION	Sec.	Town.	Range	AREA		REMARKS
				Acres	100ths	
Lot 5—ne ¼ sw ¼—s ½ sw ¼	"	"	"	158.85		Excepted from Genl Route definite location. D. S. 1029, 2/2/83. Set. 4/1/81, F. P. 4/6/83.
Se ¼	"	"	"	160		A. C. S. 2709, 10/15/67.
Lots 1-2-6 & 7	3	132	41	123.73		Hd. 153, 5/21/79. Pat. 9/30/84.
Lots 3-4 & 5 sw ¼ nw ¼	"	"	"	166.81		P. D. S. 331, 12/1/70, Set. 8/1/70, Let. 8/1/68. Hd. 3/1/72. Pat. 2/10/81.
Lot 9—s ½ sw ¼	"	"	"	112.50		P. D. S. 310, 11/25/70. Set. 6/15/68. Pat. 9/15/73.
Total				4672.08		

1010

Ford.				4672.08	
Lots 10 & 11	3	132	41	99.85	P. D S. 322 11/30/70 Set. 6/28 68. Pat. 9/15/73.
Lots 1 & 8	29	134	41	48.25	Swamp Appd. 11/13/73 Pat.
Fr'l ne. ne.—nw ¼ sw ¼	3	133	42	79.08	Hd. 7415 5/12/82. Pat 3/29/88.
Ne ¼ sw ¼—se ¼ sw ¼	"	"	"	80	Excepted from withdrawal on Gen'l Route & definite location. Hd. 5424 7/1/79. F. P. 5/11/82.
S ½ ne ¼—s ½ nw ¼	5	"	"	160	D. S. 779 4/24/79. Pat. 6/30/85.
Nw ¼ sw ¼	"	"	"	40	Hd. 629 4/14/70. Pat. 8/23/76.
S ½ se ¼—s ½ sw ¼	"	"	"	160	Excepted from withdrawal on Gen'l Route & def. Location. D. S. 1038 4/6/83. F. P. 11/1/90.
Lots 1-2 & 3	7	"	"	116.30	C. E. 205 9/1/69. Pat. 9/9/70.
Lot 10	"	"	"	29.20	C. E. 171 8/4/69. Pat. 9/9/70.
Ne ¼ nw ¼—Fr'l w ½ nw ¼	"	"	"	118.31	Hd. 910 10/14/76. Pat. 6/24/78.
Lots 2-3-4 & 5 se ¼ sw ¼	9	"	"	117.90	Hd. 8846 8/17/88. Pat. 5/23/90.
Lot 7—sw ¼ nw ¼	"	"	"	93.35	Excepted from withdrawal on Gen'l Route & Def. location. F. C. June 19-82.
N ½ sw ¼	"	"	"	80	Excepted from withdrawal on Gen'l Route & def. location. Hd. 2982 6/24/75. F. C. 6/19/92.
Nw ¼ nw ¼	11	"	"	40	Swamp Pat.
Sw ¼	"	"	"	160	Hd. 7848 4/9/83. Pat. 9/9/90.
Lot 1	15	"	"	54.70	State School Sel. 4/2/70.
Lot 4—sw ¼ se ¼	"	"	"	74.35	C. E. 4134 7/20/68. Pat. 7/20/69.
E ½ ne ¼	"	"	"	80	Excepted from withdrawal on Gen'l Route & definite location. Add'l Hd. 7850 4/9/83. F. P. 6/17/84.
Sw ¼ ne ¼—ne ¼ sw ¼—nw ¼ se ¼	"	"	"	120	P. D. S. 245 7/24/70. Pat. 4/24/74.
Sw ¼ nw ¼—nw ¼ sw ¼	"	"	"	80	Swamp Pat.

PARTS OF SECTION	Sec.	Town.	Range	AREA Acres	AREA 100ths	REMARKS.
Sw ¼ sw ¼	"	"	"	40		Hd. 567 1/31/70. Pat. 10/1/77.
Se ¼ sw ¼	"	"	"	40		Hd. 568 1/31/70. Pat. 3/20/73.
Ne ¼	17	"	"	160		A. C. S. 1154 12/12/66. Pat. 10/1/67.
Nw ¼	"	"	"	160		A. C. S. 1155 12/12/66. Pat. 10/1/67.
Sw ¼	"	"	"	160		A. C. S. 1156 12/12/66. Pat. 10/1/67.
Se ¼	"	"	"	160		A. C. S. 1157 12/12/66. Pat. 10/1/67.
Lots 1 & 2—ne ¼ ne ¼	7	134	42	115.76		Swamp Pat.
Lots 4 & 11	15	"	"	42.60		"
Lot 3—ne ¼ ne ¼	19	135	43	79.28		"
Lot 3—sw ¼ sw ¼——se ¼ se ¼	3	135	43	110.30		"
Lots 1 & 2	5	"	"	44.27		D. S. 484 1/3/71. Set. 6/8/70. Pat. 2/10/81.
Lots 5 & 6	"	"	"	59.90		Occupied B. Siverson since June 1870.
Lots 11 & 12	"	"	"	59.75		D. S. 550 2/15/71. Set. 6/8/70. Pat. 12/1/76.
Lots 1 & 2—e ½ nw ¼	7	"	"	133.44		Hd. 8912 2/25/89. Pat. 7/3/90.
Nw ¼	9	"	"	160		D. S. 541 2/6/71. Set. 6/2/69. Pat. 12/1/76.
Se ¼ se ¼	13	"	"	40		Swamp Pat.
Lot 1—ne ¼ nw ¼	17	"	"	82.70		Ole Oleson occupied since July 6/70.
Lots 2 & 3—n ½ sw ¼—se ¼ sw ¼	"	"	"	162.35		D. S. 518 1/13/71. Pat. 3/1/76.
Lots 3-4 & 5—e ½ sw ¼ sw ¼ se ¼	19	"	"	158.85		D. S. 536 2/1/71. Pat. 10/1/80.
For'd				8502.57		

1011

PARTS OF SECTION	Sec.	Town.	Range	AREA Acres	AREA 100ths	REMARKS.
For'd				8502.57		
Lots 1 & 6 sw ¼ ne ¼ nw ¼ se ¼	21	135	43	152.65		D. S. 540 2/6/71. Set. 6/20/69. Pat. 4/9/81.
E ½ se ¼	"	"	"	80		D. S. 376 12/7/70. Set. 6/27/70. Pat. 2/10/81.
W ½ nw ¼	27	"	"	80		D. S. 377 12/7/70. Set. 6/27/70. Pat. 9/30/84.
Lot 6—sw ¼ ne ¼—e ½ nw ¼	31	"	"	157.10		Occupied by Wm. Gronnewald Gen'l Route Def. location.
E ½ sw ¼—w ½ se ¼	"	"	"	160		P. D. S. 525 1/20/71. Set. 4/8/70. Pat. 4/5/77.
Lots 2 & 3—se ¼ ne ¼	19	136	43	77.20		D. L. 471 12/13/70. Set. 7/13/70. Pat. 11/2/88.
Lots 6 & 10	"	"	"	26.05		D. S. 467 12/30/70. Set. 7/30/70. Pat. 9/15/73.
Lot 9	"	"	"	14.65		D. S. 506 1/11/71. Set. 5/15/69. Pat. 9/15/73.
E ½ se ¼	"	"	"	80		D. L. 469 12/30/70. Set. 5/17/70. Pat. 9/15/73.
Ne ¼ nw ¼	21	"	"	40		D. L. 472 12/30/70. Set. 6/18/70. Pat 4/9/87.
Sw ¼	"	"	"	160		D. S. 473 12/30/70. Set. 6/18/70. Pat. 4/9/81.

PARTS OF SECTION	Sec.	Town.	Range	AREA		REMARKS
				Acres	100ths	
Ne ¼ ne ¼	29	"	"	40		D. S. 478 12/31/70. Set. 6/6/70. Pat. 11/2/88.
W ½ nw ¼	"	"	"	80		D. S. 470 12/30/70. Set. 5/17/70. Pat. 9/15/73.
Se ¼ nw ¼—n ½ sw ¼	"	"	"	120		D. S. 466 12/30/70. Set. 6/18/70. Pat. 9/30/84.
Sw ¼ ne ¼—se ¼ nw ¼	33	"	"	80		Swamp Pat.
Ne ¼ se ¼	35	136	43	40		"
Lots 1-2-3-4 & 5	1	135	44	197.40		D. S. 571 1/12/71. Set. 5/30/70. Pat. 7/22/72.
Lots 6 & 7—nw ¼ se ¼ s ½ se ¼	"	"	"	158.15		D. S. 548 2/15/71. Set. 6/7/70. Pat. 7/21/90.
Sw ¼ nw ¼	"	"	"	40		D. S. 419 12/12/70. Set. 1/1/70. Pat. 9/15/73.
Lot 2—s ½ ne ¼—se ¼ nw ¼	3	"	"	163.08		Hd. 8190 5/6/84. Pat. 12/8/90.
Se ¼ sw ¼—sw ¼ se ¼	"	"	"	80		D. S. 515 1/12/71. Set. 6/8/70. Pat. 9/15/73.
E ½ se ¼	"	"	"	80		D. S. 457 12/20/70. Set. 6/8/70. Pat. 2/10/81.
E ½ nw ¼	11	"	"	80		D. S. 512 1/12/71. Set. 6/22/70. Pat. 5/11/88.
W ½ nw ¼—n ½ sw ¼	"	"	"	160		D. S. 418 12/13/70. Set. 1/17/70. Pat. 9/15/73.
S ½ sw ¼	"	"	"	80		D. S. 449 12/19/70. Set. 6/6/70. Pat. 9/30/84.
Lots 1-2 & 3 ne ¼ ne ¼ nw ¼ nw ¼	15	"	"	194.50		D. S. 422 12/13/70. Set. 1/22/70. Pat. 9/15/73.
Lots 4-5-6 [—] ne sw ¼	"	"	"	163.75		D. S. 568 2/27/71. Set. 6/22/70. Pat. 9/30/84.
Lot 1—ne ¼ nw ¼—s ½ nw ¼	23	"	"	153.05		D. S. 438 12/14/70. Set. 6/27/70. Pat. 9/30/84.
Ne ¼	"	"	"	160		D. S. 440 12/14/70. Set. 6/27/70. Pat. 9/15/73.
Sw ¼	"	"	"	160		D. S. 439 12/14/70. Set. 6/28/70. Pat. 9/15/73.
Se ¼	"	"	"	160		D. S. 1725 6/12/75. Set. 7/5/71. Pat. 10/22/85.
Lot 4	27	"	"	16.10		Occupied at date of General Route. D. S. 401 12/12/70. F. P. 3/7/77.
Lots 6 & 7—ne ¼ se ¼—s ½ se¼	"	"	"	174 50		D. S. 396 12/10/70. Set. 5/10/69. Pat. 4/10/74.
Ne ¼	"	"	"	160		D. S. 394 12/10/70. Set. 5/10/69. Pat. 4/10/74.
Lot 1—w ½ ne ¼—se ¼ nw ¼	27	"	"	155.70		D. S. 1724 6/12/75. Set. 7/5/71. Pat. 10/21/90.
Nw ¼ nw ¼	"	"	"	40		D. S. 432 12/14/70. Set. 6/8/70. Pat. 10/19/88.

				AREA	
PARTS OF SECTION	Sec.	Town.	Range	Acres 100ths	REMARKS
Sw ¼ nw ¼	"	"	"	40	T. C. 1445 9/12/83. Occupied at date of Gen'l Route.
S ½ sw ¼	"	"	"	80	D. S. 433 12/14/70. Set 6/29/ Pat. 9/15/73.
S ½ se ¼	"	"	"	80	D. S. 437 12/14/70. Set. 6/29/70. Pat. 6/24/78.
For'd				12,666.45	
1012					
For'd				12,666.45	
Nw ¼ ne ¼	35	135	44	40	Occupied at General Route D. S. 401 12/21/71. Set. 6/25/70. F. P. 3/7/77.
Lot 4	13	136	44	24.50	D. S. 12/12/70. Set. 9/1/70. Pat. 9/15/73.
Lots 1 & 2	15	"	"	64.55	P. D. S. 404 12/12/70. Pat. 4/10/74.
Lot 3—se ¼ sw ¼—w ½ se ¼	"	"	"	157.25	P. D. S. 369 12/6/70. Set. 6/10/70. Pat. 12/1/76.
S ½ ne ¼—e ½ nw ¼	"	"	"	160	P. D. S. 387 12/8/70. Set. 7/15/70. Pat. 3/1/77.
Sw ¼ nw ¼—n ½ sw ¼—sw ¼ sw ¼	"	"	"	160	P. D. S. 410 12/12/70. Set 6/15/70. Pat. 4/9/81.
Nw ¼	23	"	"	160	P. D. S. 411 12/12/70. Set. 6/30/70. Pat. 9/15/73.
Nw ¼ sw ¼—s ½ sw ¼	"	"	"	120	P. D. S. 451 12/19/70. Set. 6/1/70. Pat. 19/15/73.
Lots 1 & 4 e ½ ne ¼	25	"	"	148.55	P. D. S. 563 2/22/71. Set. 6/30/89. Pat. 9/30/84.
Lot 2	"	"	"	54.75	P. D. S. 426 12/13/70. Set. 7/30/69. Pat. 12/1/76.
Lots 5 & 6—se ¼ sw ¼	"	"	"	122.30	P. D. S. 462 12/21/70. Set. 9/1/70. Pat. 4/25/77.
Se ¼	"	"	"	160	P. D. S. 564 2/22/71. Set. 6/30/69. Pat. 3/1/77.
Lot 1	27	"	"	.65	P. D. S. 450 12/19/70. Set. 7/10/69. Pat. 3/12/72.
Lots 3 & 8—se ½ se ¼	"	"	"	130	P. D. S. 388 12/8/70: Set. 7/10/69. Pat. 2/10/81.
Lots 4 & 7—e ½ sw ¼	"	"	"	154.10	P. D. S. 577 2/28/71. Set. 9/1/70. Pat. 12/12/74.
Lots 5 & 6—s ½ nw ¼ nw ¼ sw ¼	"	"	"	163.40	P. D. S. 503 1/11/71. Set. 11/1/69. Pat. 7/22/72.
Sw ¼ sw ½	"	"	"	40	P. D. S. 452 12/21/70. Set. 7/1/70. Pat. 12/1/76.
Lot 1—ne ¼ ne ¼—s ½ ne ¼	35	"	"	153.05	P. D. S. 421 12/13/70. Set. 1/26/70. Pat. 2/10/81.
Nw ¼ nw ¼—sw ¼ nw ¼	"	"	"	80	P. D. S. 565 2/22/71. Set. 5/17/70. Pat. 9/15/73.
Se ¼ nw ¼—n ½ sw ¼—nw ¼ se ¼	"	"	"	160	P. D. S. 456 12/20/70. Set. 5/1/70. Pat. 9/15/73.

				AREA		
PARTS OF SECTION	Sec.	Town.	Range	Acres	100ths	REMARKS
Sw ½ sw ½	"	"	"	40		P. D. S. 420 12/13/70. Set. 1/30/70. Pat. 9/15/73.
Se ¼ sw ¼—sw ¼ se ¼	"	"	"	80		P. D. S. 514 1/12/71. Set. 6/18/70. Pat. 12/10/77.
Lot 2—se ¼ ne ¼	31	133	39	60.05		Wt. 3950 12/6/67.
Lot 3—ne ¼ se ¼—s ½ se ¼	"	"	"	159.85		Wt. 3944 11/25/67.
Lot 4	"	"	"	27		C. E. 3826 12/6/68.
Total				15,286.45 Acres		

1013 DULUTH EXHIBIT "G-G".—Duly certified. Offered in evidence at page 325, this record:

G. The United States of America.

To all to whom these presents shall come, Greeting:

Certificate
No. 14311.

Whereas Robert Angst, of Hennepin County, Minnesota, has deposited in the General Land Office of the 1014 United States a Certificate of the Register of the Land Office at Duluth, Minnesota, whereby it appears that full payment has been made by the said Robert Angst according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provisions for the sale of the Public Lands," and the acts supplemental thereto, for the South East quarter of the North West quarter and the North East quarter of the South West quarter of Section One in Township fifty-four north of Range thirteen West of the Fourth Principal Meridian in Minnesota, containing eighty acres, according to the Official Plat of the Survey of the said lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said Robert Angst.

Now Know Ye, That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, Have Given and Granted, and by these presents do give and grant, unto the said Robert Angst and to his heirs, the said Tract above described; To Have and to Hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Robert Angst and to his heirs and assigns forever.

In Testimony Whereof, I, William McKinley, President of the United States of America, have caused these letter- to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the twenty-sixth day of January, in the year of our Lord one thousand eight hundred and ninety-eight, and of the independence of the United States, the one hundred and twenty second.

1015 By the President: WILLIAM McKINLEY.
By F. M. McKean, Secretary.
C. H. BRUSH, Recorder o f the General Land Office.

[United States General
Land Office Seal.]
Recorded, Vol. 10, Page 155.

DULUTH EXHIBIT "H-H".—Offered in evidence at page 325, this record.

This indenture, Made this 26th day of May in the year of our Lord, one thousand eight hundred and ninety-eight between Robert Angst and Anna Angst, his wife, parties of the first part, and the Franklin Lumber Company of Duiuth, Minnesota, party of the second part,

Witnesseth, That the said parties of the first part, for and in consideration of the sum of seven hundred and 00/100 Dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey unto the said party of the second part, its successors and assigns, forever, all the tracts or parcels of land lying and being in the County of St. Louis and State of Minnesota, described as follows, to wit:

The Southeast quarter of the Northwest quarter and the Northeast quarter of the Southwest quarter of Section One (1) in Township Fifty-four North of Range Thirteen west of the Fourth Principal Meridian, according to U. S. Govt. Survey and Plat.

To have and to hold the same, Together with all hered-
1016 itaments and appurtenances thereunto belonging or in
anywise appertaining, to the said party of the second part, its successors and assigns, forever. And said Robert Angst and Anna Angst parties of the first part, for themselves, their heirs, executors and administrators, do hereby covenant

with the said party of the second part, its successors and assigns, that they [—] well seized in fee of the lands and premises aforesaid, and have good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances; and the above bargained and granted lands and premises, in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part will warrant and defend.

In testimony whereof, The said parties of the first part have hereunto set their hands and affixed their seals the day and year first above written.

S. Baumann ANNA ANGST. [Seal.]
Geo. Huhn ROBERT ANGST. [Seal.]
as to Anna Angst.
Jean Aras
A. H. Viele.
as to Robert Angst.

State of Minnesota,
County of Hennepin—ss.

On this 26th day of May A. D. 1898, before me, a Notary Public within and for said County, personally appeared Anna Angst to me known to be the same person described in, and who executed the foregoing and within instrument, and acknowledged that she executed the same as her free act and deed.

[Notarial Seal.] GEO. HUHN, Notary Public,
Hennepin Co.

1017 State of Minnesota,
County of St. Louis—ss.

On this 28th day of May A. D. 1898, before me, a Notary Public within and for said County, personally appeared Robert Angst to me known to be the person described in and who executed the foregoing and within instrument, and acknowledged that he executed the same as his free act and deed.

[Notarial Seal.] A. H. VIELE, Notary Public,
St. Louis County

Office of Register of Deeds,
County of St. Louis, Minn.—ss.

I hereby certify that the within Deed was filed in this office for record on the 4th day of Jane A. D. 1898, at 8:30 o'clock A. M., and was duly recorded in Book 117 of Deeds on page 611.

A. LOFGREN, Register of Deeds.
By N. N. Oie, Deputy.

DULUTH EXHIBIT "I-I".—Offered in evidence at page 325, this record:

This duplicate agreement made and entered into this 14th day of July 1898, by and between the Franklin Lumber Company, a corporation duly organized and existing under the laws of the State of Minnesota, party of the first part, and E. S. Howe, of Duluth, Minnesota, party of the second part.

Witnesseth, That the party of the first part agrees to sell to the party of the second part all the pine timber suitable for saw logs growing and being upon the East half of North East quarter (E ½ of N. E. ¼), South West quarter of North East quarter (S. W. ¼ of N. E. ¼), South East quarter of
1018 North West quarter (S. E. ¼ of N. E. ¼), North East quarter of South West quarter (N. E. ¼ of S. W. ¼) and West half of South East quarter (W. ½ of S. E. ¼), Section one (1), and North West quarter of North East quarter (N. W. ¼ of N. E. ¼) and South East quarter of North East quarter (S. E. ¼ of N. E. ¼) of Section twelve (12), Township fifty-four (54) North of Range thirteen (13) West, St. Louis County, Minnesota, which will cut down to and include sizes which will make logs sixteen feet long and eight inches thick at the top end, and include large defective timber which will scale one-half sound lumber, for the sum of Two Dollars ($2.00) per Thousand feet board measure. The scale to be a straight and sound scale according to Scribner's rule as logs are usually scaled in this district, which shall be paid for at the time hereinafter mentioned, and to cut said land clear and remove same by or before May first, 1899.

Said second party agrees to purchase said timber at the price above mentioned, and to have the same all cut and removed from said land by or before May first 1899. Time to be the essence of this agreement.

Said second party agrees to pay for said timber as follows: Five Hundred Dollars ($500.00) cash, and balance May first, 1899, together with six per cent interest per annum on said deferred amount.

Said second party agrees to put to work in cutting and removing said timber early this coming fall, sufficient equipment and force of men to cut and remove said timber, and work the same continuously until said timber is all cut and removed, which shall be within the time specified; and in skidding and banking said logs not to mix them with other logs and to bank said logs on Cloquet River, before banking logs from any other land in said neighborhood, in said

township, and to do said work in a skillful and work-
1019 manlike manner.

It is mutually agreed that said logs shall be marked or stamped .... (end mark), which shall be recorded in the name of first party.

It is mutually agreed by and between the parties hereto, that the scale of said logs shall be such a scale as said second party shall sell said logs under, so long as the same is reasonably correct, to be scaled when banked on said River under the supervision of the Surveyor General of logs for this District.

Said second party to board said Scalor and the expense of scaling to be [bourne] by said second party. Should said second party fail to cut and remove the timber from any small portion of said land, the amount of such stumpage shall be estimated by scaling, and estimating same by a party to be mutually agreed upon by the parties hereto at the expense of second party, and said stumpage to be paid for by said second party at the same price and terms as above provided for other timber under this contract, and second party shall have until January 20th, 1900, to remove same by paying the tax for 1898 on such discriptions as remian uncut.

It is further agreed that said first party shall have and retain a first lien upon said timber and the logs to be cut therefrom for the purchase price thereof until the same is fully paid.

FRANKLIN LUMBER CO.

By F. R. Webber, President.
E. S. HOWE.

Witness
D. S. McDonald,
Giles Gilbert.
[Corporate Seal.]

(12 cents Canceled Rev. Stamps).

Indorsed: E. S. Howe Timber Cont. 54R 13.

Filed for record on the 23rd day of Nov. A. D. 1898 at 2 P. M. and recorded in Book B Records page 299 & 300 in the office of the Surveyor-General for the Fifth Lumber District of Minnesota.

WM. GETTY, Surveyor General.
By W. F. McKay, Deputy.

1020 DULUTH EXHIBIT "J-J".—Offered in evidence at page 326, this record:

Sec. 1 Twp. 54 Range 13

			W
	$\frac{250}{14}$ coarse	W	W
	$\frac{225}{15}$ coarse	W	$\frac{150}{14}$ S coarse
		W	

Remarks S. E-N W N E-S W and N E-S E all white pine small sound and coarse.
Estimated by S. C. Brown.
May .... 189....

1021 DULUTH EXHIBIT "K-K".—Offered in evidence page 233, this record:

Surveyor General's Office,
Duluth, Minn., April 24, 1901.
Bill of Pine Logs scaled by request of F. R. Webber
Trespass on Sec. 1-54-12.
Scaled by Deputy Thomas Baker Hauled by.............

Marks. Marks.	No. Logs.	Feet.
NE ¼ of SW ¼	1735	344,083
SE ¼ of NW ¼	2212	436,339

Diameter scale stump & top
according to Scribner's Scale

Pine, Spruce & Tamarac.

Total,		
Total previously reported,		
Total to date,	3947	780,262

JOHN B. BRADY, Surveyor General, 5th District, Minn.
[Official Seal.] By Alice Brady, Deputy.

DULUTH EXHIBIT "L-L".—Offered in evidence page 265, this record:

[1022]

S E of N W	23	54	17	Vacant Jany 1-1888. Homestead application filed Aug 23 1900.
Lot 1	9	54	11	Never taken
S E of N E	25	55	11	Vacant Jany 1-1888
S E of S E	3	55	14	Vacant Jany 1-1888. Sold public sale Aug. 1, 1890.
W2 N W	23	55	16	Vacant Jany 1-1888.
N W S W	27	55	16	Vacant Jany 1-1888.

DULUTH EXHIBIT "M-M".—Offered in evidence at page 266, this record.

FOLD OUT IS TOO LARGE TO BE FILMED

1024 That on the 8th day of August, A. D. 1901, there was filed with said Clerk a Certified Copy of the proceedings had in said cause on August 1st, 2nd, and 3rd A. D. 1901, at Minneapolis, in the Fourth Division of said District; which said copies are, in words and figures, as follows, to wit:

United States Circuit Court for the District of Minnesota.
Fourth Division

Term Minutes. March Term, A. D., 1901. August 1, 1901.

Thursday Morning.

Court open pursuant to adjournment.

Present: Honorable William Lochren, Judge.
William H. Grimshaw, U. S. Marshal.
Henry D. Lang, Clerk.
By Robert C. Mabey, Deputy.

John A. Humbird et al.
vs.
Waldo A. Avery et al.

The above entitled cause coming regularly on for hearing upon the pleadings, final proofs, and arguments of counsel the same is argued on behalf of the complainants by Messrs. W. W. Billson, H. Oldenberg, and James B. Kerr, and on behalf of the defendants by Messrs. Benton Hanchette, H. H. Hoyt, M. H. Stanford and L. C. Harris; and the argument thereof not being concluded at the hour of adjournment, it is by the Court

Ordered: That further proceedings herein be and the same hereby are postponed until to-morrow morning, at 8:30 o'clock.

Friday Morning.

Court open pursuant to adjournment.

Present: Honorable William Lochren, Judge.
William H. Grimshaw, U. S. Marshal.
Henry D. Lang, Clerk.
By Robert C. Mabey, Deputy.

1025 John A. Humbird et al.
vs,
Waldo A. Avery et al.

This cause coming on to be further heard upon the pleadings, final proofs, and arguments of counsel; Messrs. W. W. Billson, H. Oldenberg and James B. Kerr are heard on behalf of the complainants, and Messrs. Benton Hanchette, H. H.

Hoyt, M. H. Stanford and L. C. Harris on behalf of the defendants; and the argument thereof not being concluded at the hour of adjournment, it is by the Court

Ordered: That further proceedings herein be and the same hereby are postponed until to-morrow morning, at 8:30 o'clock.

Saturday Morning.

Court open pursuant to adjournment.

Present: Honorable William Lochren, Judge.
William H. Grimshaw, U. S. Marshal.
Henry D. Lang, Clerk.
By Robert C. Mabey, Deputy.

John A. Humbird et al.
vs.
Waldo A. Avery et al.

This cause coming on to be further heard upon the pleadings, final proofs, and arguments of counsel, Messrs. W. W. Billson, H. Oldenberg and James B. Kerr are heard on behalf of the complainants, and Benton Hanchette, H. H. Hoyt, M. H. Stanford and L. C. Harris on behalf of the defendants, and said cause is duly submitted and the Court being fully advised in the premises, it is

Ordered: That a decree be entered for the defendants and counsel for the defendants are instructed to draw, have signed and file an order accordingly.

1026 United States of America,
District of Minnesota.
Four Division.—Set.

I, Henry D. Lang, Clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that I have carefully compared the foregoing paper writings with the original- thereof, which are in my custody as such clerk, and that such copies are correct copies of such originals and of the whole thereof, in the cause therein named.

Witness my hand as Clerk, and the Seal of said Court. Done at my office in Minneapolis, Minnesota, this 7th day of August A. D. 1901.

[Seal of said Court.] HENRY D. LANG, Clerk,
By Robert C. Mabey, Deputy.

Indorsed: Filed August 8th, 1901. Henry D. Lang, Clerk. By Margaret McKay, Deputy Clerk.

That on the 29th day of August, A. D. 1901, there was filed with said Clerk, the Decision of the Court in said cause; which said Decision is, in words and figures, as follows, to wit:

Circuit Court of the United States, District of Minnesota,
Fifth Division.

John A. Humbird and Frederick A. Weyerhauser,
vs.
Waldo A. Avery, George B. Morley et als.
Decision.

1927 The complainant above named, claiming the equitable title and ownership of very numerous tracts or parcels of land in the State of Minnesota, lying in odd-numbered sections north of the line of the Northern Pacific Railroad, and east of the Meridian of Duluth, and within the limits of the indemnity belts of land granted by Congress in aid of the construction of said railroad, under conveyances or contracts of sale from the Northern Pacific Railway Company, which is the successor of the Northern Pacific Railroad Company, and entitled to all rights of said last named company in said lands, filed this bill against the numerous defendants named therein, who are [respectfully] Settlers upon parcels of said lands, or purchasers of parcels thereof from the United States, or grantee of such purchasers, to have adjudicated and established, the right and title of Complainants to said lands, and to have the claims of defendants thereto adjudged invalid, and disposed of as clouds upon the right and title of complainants, and for other relief specifically asked, or generally prayed for.

The answers of the answering defendants respectfully assert their rights to lands, as lawful settlers thereon under the laws of the United States, or under purchases from the United States.

The controversy in regard to the title of these lands arose from conflicting action and rulings of the Land Department of the United States respecting the point of location on Lake Superior of the eastern terminus of the Northern Pacific Railroad, and as to the right of the Northern Pacific Railroad Company to receive any lands, under its land grant, in respect to that portion of its railroad which was built and operated between Thomson Junction in the State of Minnesota and Ashland in the State of Wisconsin.

The map of definite location of that portion of said railroad was transmitted to the Secretary of the Interior, July 3, 1882, and was accepted, and the land grant adjusted to the line shown thereon and the lands appertaining to that portion

of the railroad withdrawn from sale or entry by order of the Secretary. On August 28, 1884, the board of directors of the Northern Pacific Railroad Company, by resolution, fixed and located the eastern terminus of said railroad at Ashland;
and transmitted a copy of such resolution to the land
1028 Department, Dec. 3, 1884; and that was accepted by the
Land Department as establishing such eastern terminus.
That portion of the railroad was constructed, and was accepted by Commissioners appointed by the President; and said Northern Pacific Railroad Company, pursuant to directions of the Secretary of the Interior, made and filed its lists of selections of lands in said indemnity belts in lieu of lands lost to it in its place limits, including all the lands in controversy in this suit; which list of selected lands were accepted and approved by said Land Department, and some of the same were afterwards patented to said Northern Pacific Railroad Company, but not including any which are embraced in this suit. But thereafter on August 27, 1896, the Secretary of the Interior ruled and decided that the eastern terminus of said railroad was at the City of Duluth; and that its land grant did not extend east of the meridian of that City, and thereupon by his order said lists of selections were cancelled, and the land so selected, opened for sale and entry as unappropriated public land; and thereafter and conformably with such ruling of the Secretary of the Interior, the entries and purchases were made under which the present defendants now claim.

Most of the foregoing matters will be found stated more at length, in the reports of the cases of
United States v. Northern Pac. R. Co. 95 Fed. 864;
United States v. Northern Pac. R. Co. 177 U. S. 435;
and Doherty v. Northern Pac. R. Co. 177 U. S. 421.

These decisions finally adjudged that the eastern terminus of said railroad was at Ashland; and on the filing, on April 16, 1900, of the Supreme Court decisions just referred to, the Secretary of the Interior revoked the order cancelling said lists of selections, and reinstated the said lists

Prior to July 1, 1898, the Supreme Court of the State of Wisconsin, in the Doherty Case above cited, then pending before it, had adjudged and decided that the eastern terminus
of said railroad was established at Ashland; and this
1029 Court in the other above cited case then pending before
it had rendered judgment to the same effect; and on
that date by provisions contained in Chapter 546 of Vol. 30 Statutes, at page 620, Congress enacted:

"That where, prior to January first, eighteen hundred and ninety-eight, the whole or any part of an odd numbered section in either the granted or the indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of the grantee or its lawful successor is claimed to have attached by definite location or selection, has been purchased directly from the United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department, and when purchaser, settler or claimant refuses to transfer his entry as herein provided, the railroad grantee or its successor in interest, upon a proper relinquishment thereof, shall be entitled to select in lieu of the land relinquished an equal quantity of public lands, surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron or coal, and free from valid adverse claim or not occupied by settlers at the time or such selection, situated within any State or Territory into which such railroad grant extends, and patents shall issue for the land so selected as though it had been originally granted," &c.

This act further provides that the Secretary of the Interior should ascertain, prepare and deliver to the railroad grantee or its successor in interest, lists of the tracts of land so purchased or settled upon and now claimed by the purchasers or occupants their heirs or assigns, and that the right, title and interest of the railroad grantee so relinquished should revert to the United States, and the lands be treated as if the grant had never included them.

The act further provided that the railroad grantee or its successors in interest should accept as conclusive, in respect to the lands to be relinquished, the lists so to be made by the Secretary of the Interior; but should not be bound to relinquish "lands sold or contracted by it or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron or coal."

The act further provides that all qualified settlers, their heirs or assigns, who, prior to January 1, 1898, purchased or settled upon or claimed in good faith under color of title or claim or right, under any law of the United States or any ruling of the Interior Department, any part of an odd-numbered section in either the granted or indemnity limits of
1030 said land grant, may, in lieu thereof, transfer their
claims to other public lands, specified, with credit for their residence and improvements, and that the Secretary of the Interior should give notice to such persons of their op-

tion to take lieu lands, before delivering the lists to the railroad grantee or its successor in interest.

This act of July 1, 1898 was duly accepted by the Northern Pacific Railway Company, on July 13, 1898, and before it had sold or contracted to sell to complainants or to any one, and of the lands described in the bill.

The obvious purpose of this act was to provide a certain, speedy and equitable way in which all controversies between the railroad grantee or its successors, and purchasers or settlers upon odd-numbered sections within the place or indemnity limits of the land grant, who claimed by color of any law of the United States or any ruling of the Land Department, should be settled and adjusted, without contest or litigation, either in the Land Department or in the Courts. The railway company by its express acceptance of the act became bound by its provisions, and obligated to carry out its terms.

By its terms, each of such purchasers and settlers is to be notified by the Secretary of the Interior, of his option to transfer his entry or claim and take other lands in lieu thereof. If he takes such lieu lands, he relinquishes his former land, and this ends his contest with the railroad grantee. As to those purchasers for settlers who elect to retain their claimed lands, the railroad grantee or its successor on receiving lists of such lands from the Secretary, must relinquish the lands so listed, and may take lieu lands therefor, and the relinquished lands revert to the United States, and stand as if never included in the land grant; and the controversies about them are ended.

But the complainants, while not conceding that by the Act of July 1, 1898, it is made obligatory on the railroad grantee or its successor to relinquish any lands, contends that
1031 if such obligation does arise as to any lands, it is only as to lands which shall not have been sold or contracted to be sold by the railroad grantee or its successor prior to the time when such lands shall have been included by the Secretary of the Interior on lists of contested lands served upon the railroad grantee or its successor, as required by that act. They claim, therefore, that the lands described in the bill are not affected by that act, because they were "sold or contracted" by the railway company to the complainants, January 19, 1900, after the passage of said act, but before the service upon the railroad grantee or its successors by the Secretary of the Interior, of any lists of lands claimed by purchasers or Settlers, and therefore to be relinquished by the railroad grantee or its successor.

This contention of the complainant is untenable. The act refers to conditions existing at the time of its passage. It does not embarass the railroad grantee, by requiring it to relinquish any land which before the passage of that act it has sold or contracted; neither does it provide for its own practical nullification, by excepting from its provisions lands which the railroad grantee might thereafter choose to sell or contract, as in this immense sale of lands to the complainants. And after the passage and acceptance of the act, the complainants could acquire no rights in the land not in subordination to its provisions. The act speaks from its passage. It does not make any rights or obligations dependent upon the celerity or tardiness of the Secretary, in the performance of the duties which the act imposes upon him.

It appears that a very few of the defendants claim under patents issued before January 1, 1898, and complainants contend that said Act of July 1, 1898, has no application to lands so patented; and that such has been and is the ruling of the Land Department,—28 Land Decisions 103; Ibid, 470; 29 Land Decisions 244, 226. It is apparent from these citations, that such has been the construction placed upon that Act
1032 by the Secretary of the Interior. I believe however that such construction of the act is erroneous. It appears from the statements in one of these citations that aftr the passage of said Act, some land covered by its provisions, were inadvertently patented, and the views of the Secretary as to the scope of the act, and the powers and duties of the Land Department in carrying it into effect, appear in the instruction of Acting Secretary Ryan to the Commissioner of the General Land Office, June 3, 1899, 28 Land Decisions 471:

> "Paragraph seven of the regulations approved February 14, 1899, (28 L. D. 103,) issued under the act of July 1, 1898, states that:
>
> Since the issuance of patent terminates the jurisdiction of the Land Department over the lands patented and exhausts its power to examine and decide upon claims to such lands, and since this act manifestly refers to conflicting claims to lands which have not passed beyond the jurisdiction of the Land Department, it follows that its provisions are confined to unpatented lands, and that lands which have been patented are not the subject of relinquishment and cannot be made the basis of a lieu selection under this act.
>
> This portion of the paragraph can only relate to such lands as had been patented prior to the Act of July 1, 1898, and as to all such lands said act is without application. But all conflicting claims coming within the provisions of said act,

to land which remained unpatented July 1, 1898, should be disposed of in accordance with the provisions of that act.

The patenting of all lands which were on July 1, 1898, the subject of such conflicting claims without following the provisions of said act, was in violation of its terms and therefore erroneous.

To the end that the benefits intended to be extended by said act may be still secured to those entitled thereto, and to avoid possible and unnecessary litigation in the courts as a result of the inadvertent or erroneous issuance of patents since July 1, 1898, in such cases, the following regulation is added to those adopted February 14th, last under said act namely:

47. Where any portion of an odd-numbered section within the limits of the grant to the Northern Pacific Railroad Company coming within the provisions of the Act of July 1, 1898, as herein construed, has been patented without following the provisions of that act, the individual claimant will, notwithstanding the issuance of such patent, be advised in the manner prescribed by paragraph 18, of the option accorded him by said act. If the patent was issued to him, and he elects to relinquish his claim he will be required to make reconveyance of the land to the United States in the manner prescribed by paragraphs 24, 25 and 26; but if he elects to retain the land patented it will be listed according to paragraph 23, with a view to its relinquishment by the railroad company. If the patent was issued to the railroad company and the individual claimant elects to retain the land so patented the company will be required to make reconveyance thereof to the United States according to paragraph- 24 and 26, whereupon the individual claimant may perfect title thereto, and the railroad company may select other lands in lieu thereof as in other cases."

1033 The situation at the time of the passage of the act of July 1, 1898, was this: By reason of the erroneous ruling of the Secretary of the Interior as to the location of the eastern terminus of said railroad, and his revocation of his prior approval of lawful selections by the railroad company of indemnity lands, and permitting sales and entries of such selected lands, as unappropriated, he had introduced [condusion] and conflict in respect to the right to such lands, which was beginning to be litigated in the courts; as the suits which resulted in the Supreme Court decisions above cited had then been commenced, and very much litigation seemed probable. The fact that patents had issued in a few instances would not end such disputes as to the lands so patented, as courts would adjudge the patentee in any case to hold the title in trust for the other party, wherever the other party had clearly the right to the land. The quieting of claims and titles to such a vast area of land, was matter of public concern, and it was proper and beneficent legislation on the part of Congress to thus provide for the settlement and ending, with the full consent and through the voluntary action of the parties in each instance, of all disputes existing in the Land Department in respect to the unpatented lands, as well as all disputes which might arise in the courts as to whether patents for the patented land had been issued by the Land Department to the right parties.

This act gives the option to keep or relinquish the disputed land to the individual claimant in every instance. If he elects to retain that land, it is to be listed by the Secretary, in lists to be furnished to the railroad claimant, who must relinquish; and whose consent to this was given by its acceptance of the act.

The statement of the Secretary in his instructions above quoted, that "the issuance of patent terminates the jurisdiction of the Land Department over the lands patented and exhausts its power to examine and decide upon claims to such lands," while true, is wholly irrelevant in respect to
1034 all lands affected by the act of July 1, 1898. That act
does not provide for any examination or decision whatever by the Land Department, of the merits of any claims to any lands. The acts required to be done by the Secretary of the Interior are merely ministerial,—first to offer the option to the individual claimant, and if the land is by him relinquished, to require such instrument as will make the relinquishment effectual. If he refuses to relinquish, then the Secretary's duty is to place the land on the list respecting which relinquishment is to be required of, and cannot be refused by the railroad claimant; the lists so furnished being conclusive.

The other statement in the Secretary's instructions that the act "manifestly refers to conflicting claims to lands which have not passed beyond the jurisdiction of the Land Department," is stated as a corollary to the last previously quoted statement, and is "manifestly" incorrect, as no sentence in that act favors such limited construction. On the contrary its broad terms include patented as well as unpatented lands, respecting which such conflicting claims existed.

There can be no more difficulty in executing the act in respect to lands coming within its term, which were patented before its passage than in respect to the lands which were inadvertently patented after the passage of the act, and about which the Secretary finds no difficulty. The patents last referred to, though erroneously issued, were not void, and effectually passed the title, and exhausted the jurisdiction of the Land Department.

Moore v. Robbins, 96 U. S. 530, 532.

But the Secretary very properly did not consider that this at all disabled him from performing the ministerial duties devolved upon him by the Act of July 1, 1898, in respect to the lands so patented. The same is true respecting the lands patented before the passage of the act; and the procedure which he directs to be adopted by paragraph 47 of his instructions, is as appropriate and effectual in the one case as in the other.

1035 Complainants contention that the Act of July 1, 1898, only applies to lands claimed by "Settlers" cannot be maintained. The language employed is broad enough to include all purchasers from the United States, under any law, or ruling of the Land Department.

In respect to about 4500 acres of the land described in the bill and claimed by the complainants, it appears by the exhibit attached to the bill that the entries thereof by the individual claimants were made later than January 1, 1898, and therefore that the Act of July 1, 1898, does not apply to such lands. But the same exhibit shows that none of these lands have been patented to anyone. It therefore appears that the legal title to these lands is not in either the complainants or defendants, but still in the United States; and that the contests as to the right to these lands are still pending, or may be prosecuted, before the Land Department of the United States. While the matters are in this condition it is improper for a court to assume to adjudicate the rights of the contesting parties. The language of Mr. Justice Miller, in Marquez v. Frisbie 101 U. S. 473, 475, is applicable:

"We have repeatedly held that the courts will not interfere with the officers of the government while in the discharge of their duties in disposing of the public lands, either by injunction or mandamus.

Litchfield vs. Register and Receiver, 9 Wall. 552; Gaines v. Thompson, 7 id. 347; The Secretary v. McGarrahan 9 id. 298.

And we think it would be quite as objectionable to permit a State Court, while such a question was under the consideration and within the control of the executive department, to take jurisdiction of the case by reason of their control of the parties concerned, and render decree in advance of the action of the government, which would render its patents a nullity when issued."

It is just as improper for a Federal Court as for a State Court, to assume to determine and adjudicate the rights and equities of contesting claimants for public lands, while the matter is still pending before the Land Department.

The only other ground upon which the complainants urge their right to equitable relief, is as to two forty acre tracts, in Section 19, Township 54, Range 12, claimed by the defendant Michael Kelley, under conveyance from Malcolm A. 1036 McDonald, the entryman. The proof shows that said Kelley has caused to be cut and removed from said two tracts, a large amount of pine timber, including substantially all the pine timber of merchantable value growing thereon; and complainants contend that they are entitled to an injunction to restrain said Kelley from cutting or removing any more timber from said tracts, and to a decree against him for the value of such pine timber already cut and removed by him, such value to be ascertained by reference to a master.

But the complainants cannot be awarded the value of the pine timber so cut and removed, without an adjudication, in this suit, that they have at least the equitable right to the land; and such adjudication may not be made while jurisdiction to determine that matter remains in the Land Department; as it does until patent for the land shall issue.

It is unnecessary to decide whether a case may not arise, when, even while the disputed question as to the rights of contesting parties to a tract of public land is pending or cognizable before the Land Department, a court of equity may properly interfere by injunction at the suit of one of the claimants, to prevent the other claimant from [dispoiling] the land by waste, and appropriating its substantial value, by denuding it of all its merchantable timber, before any final decision upon the disputed claims by the Land Department, which is only rendered by issuing the patent.

I think a court of equity should in such cases refuse interference by injunction to preserve merely technical rights,—the Statu quo,—but only, (if at all) to prevent serious and substantial injuries. Here, it seems from the proofs that an injunction will be practically ineffectual, as the merchantable timber, of any substantial value, has already been taken and removed from the Land.

On the hearing no technical objection to any pleading
1037 was urged, or has been considered; as the parties apparently desired a decision on the merits.

Decree will be entered dismissing the bill with costs.

WM. LOCHREN, Judge.

Indorsed: Filed August 29, 1901. Henry D. Lang, Clerk. By Thos. H. Pressnell, Deputy Clerk.

That said cause was, by said Clerk duly placed on the Calendar for the October, A. D. 1901, Term thereof, and that the following proceedings were had therein, to wit:

United States Circuit Court for the District of Minnesota.

Term Minutes. October Term, A. D., 1901, October 12th, 1901.

Saturday morning.

Court opened pursuant to adjornment.

Present: Hon. William Lochren, Judge; Hon. Milton D. Purdy, U. S. District Atty.; Wm. H. Grimshaw, U. S. Marshal; By T. J. Sheehan, Deputy; Henry D. Lang, Clerk.

John A. Humbird and Frederick Weyerhauser, Complainants,
No. 359. vs.
Waldo A. Avery et al., Defendants.

This cause being regularly upon the calendar comes on for hearing upon the application of Defendants for a Decree. Wm. W. Billson, Esq., appeared as solicitor for the complainants and H. H. Hoyt., Esq., and Alfred Jaques, Esq., [appears] as solicitors for the defendants, and thereupon after hearing
the statements of the solicitors for the respective parties
1038 hereto, the Decree of this Court in this cause is duly
made and entered in the form duly consented to and approved by said solicitors as follows, to wit:

Decree.

At a stated term of the Circuit Court of the United States of America, for the District of Minnesota, for the Fifth Division held at Duluth on Tuesday the Eighth day of October, 1901.

Present the Honorable William Lochren, District Judge.

John A. Humbird and Frederick Weyerheauser, Complainants,
vs. In Equity.
Waldo A. Avery, George B. Morley, Olean Land Company, a corporation organized and doing business under the laws of the State of Minnesota, Joseph L. Pecotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Rich-

ardson, Charles McIlhargey, LeRoy Brooks, John B. Kehl, C. M. Hill Lumber Company, a corporation organized and doing business under the laws of the State of West Virginia, Jane B. Noyes, Isaac Henry, Joseph Nevin, Benjamin Grimm, Chris Johnson, Peter Bohan; Elizabeth Peterson, Angie C. Thomas, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee, Michael Kelly, Otto Carlson, Alger, Smith & Company, a corporation organized and doing business under the laws of the State of Michigan, Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a corporation organized and doing business under the laws of the State of Minnesota, Lucina A. Sylvester, Justin H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, S. J. Cusson, Johnson-Wentworth Company, a corporation organized and doing business under the laws of the State of Minnesota, Cloquet Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, Jethro G. Mitchell, LeRoy Brooks and W. C. McClure, as co-partners doing business under the firm name of Mitchell & McClure, Defendants.

This case came on for hearing upon the pleadings and proofs, and after hearing the argument of counsel, and due deliberation had thereon,

Thereupon, upon consideration thereof, it is ordered, adjudged and decreed that the complainants' bill of complaint herein be, and the same hereby is dismissed; the dismissal to be without prejudice as to all lands except those upon which patents have issued, as shown by Exhibit A, attached to the bill of complaint.

It is further adjudged that the defendants recover their costs herein which have been taxed and allowed in the sum of $368.45.

Dated October 12th, 1901. WM. LOCHREN, Judge.

* * * * * * * * *

1039 Ordered, that this Court do now adjourn until Monday morning at nine o'clock.

A true record,
Attest: HENRY D. LANG, Clerk,
By Thos. H. Pressnell, Deputy.

That on the 24th day of October, A. D. 1901, there was filed with said Clerk an Appeal from the Judgment, Assignment of Errors and Bond on Appeal in said cause; which said documents are, in words and figures, as follows, to wit:

United States Circuit Court, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants and Appellants,
vs. In Equity.
[To] Waldo A. Avery, George B. Morley, Olean Land Company, a corporation organized and doing business under the laws of the State of Minnesota, Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Clharles McIlhargey, LeRoy Brooks, John B. Kehl, C. M. Hill Lumber Company, a corporation organized and doing business under the laws of the State of West Virginia, June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan; Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee, Michael Kelley, Otto Carlson, Alger, Smith & Company, a corporation organized and doing business under the laws of the State of Michigan, Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin, L. Fraser, Norris Realty Company, a corporation organized and doing business under the laws of the State of Minnesota, Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, S. J. Cusson, Johnson-Wentworth Company, a corporation organized and doing business under the laws of the State of Minnesota, Cloquet Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota, Jethro G. Mitchell, LeRoy Brooks and W. C. McClure, as co-partners doing business under the firm name of Mitchell & McClure, Defendants and Appellees.

The above named complainants, John A. Humbird and Frederick Weyerhaeuser conceiving themselves aggrieved by the judgment entered on the 12th day of October A. D. 1901, in the above entitled proceeding, do hereby appeal from said decree to the United States Circuit Court of Appeals

1040 for the Eighth Circuit, and they pray that this their appeal may be allowed; and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

Dated October 18th, 1901.

H. OLDENBERG,
BILLSON, CONGDON & DICKINSON,
J. B. KERR,
Solicitors for Appellants,
Duluth, Minn.

The foregoing claim of appeal is allowed. Oct. 24, 1901.
WM. LOCHREN,
United States District Judge,
District of Minnesota.

Indorsed: Filed Oct. 24th, 1901. Henry D. Lang, Clerk. By Thos. H. Pressnell, Deputy Clerk.

United States Circuit Court, District of Minnesota, Fifth Division.

John A. Humbird and Frederick Weyerhaeuser, Complainants and Appellants,
vs. In Equity.
Waldo A. Avery, George B. Morley, Olean Land Company et al., Defendants and Appellees.

And now in the above entitled cause and at the time of filing their petition for appeal therein come the said appellants John A. Humbird and Frederick Weyerhaeuser, by H. Oldenberg, Billson, Congdon & Dickinson, and J. B. Kerr, their solicitors, and say, that in the record and proceedings in the above entitled matter, it manifestly appears that the Court erred in the particulars following, to wit:

(1) In adjudging that by force of the Sundry Civil Appropriation Act of Congress of July 1, 1898, the Northern
1041 Pacific Railway Company became obligated to relinquish to the United States the lands described in the bill of complaint or any of them, although all such lands had been sold by said company to complainants prior to the inclusion of any of them in any of the lists of lands purchased, settled upon or occupied, which by the terms of said act, the Secretary of the Interior was required to prepare and deliver to the Railway Company.

(2) In construing the said act of July 1, 1898, as obligating the Railway Company to relinquish any lands to the United States.

(3) In adjudging that any of the defendants had purchased settled upon, claimed or occupied any of the lands described in the bill of complaint prior to January 1st, 1898, excepting only those defendants whose entries are specified as anterior to that date in the second column of Exhibit "A" attached to and made a part of the bill of complaint.

(4) In adjudging that those lands claimed by defendants upon which, as specified in the fourth column of Exhibit "A" attached to, and made a part of, the bill of complaint, and admitted by the answers, patents had issued prior to the passage of the Sundry Civil Appropriation Act of July 1, 1898, were within the purview of that act.

(5) In adjudging that the controversies between the complainants and the several defendants with respect to the lands in the bill of complaint described, or any of them, are in fieri in the Interior Department of the United States so as to be an improper subject-matter for judicial consideration; and in adjudging it a prerequisite to a judicial determination of the equities of the complainants in any particular parcel of said lands, that a patent should have issued therefor.

(6) In adjudging the issuance of patent a prerequisite to relief by the complainants notwithstanding the great multiplicity of actions which must thence ensue.

1042 (7) In adjudging that until the issue of patent upon any particular parcel of land in the bill of complaint described, the complainants, although having a vested right and equitable interest therein, are not entitled to have their equities in such land judiciously established.

(8) In adjudging the threatened continued cutting of timber by the defendants Michael Kelley and Cloquet Lumber Company from the lands described as the Southeast Quarter of the Northeast Quarter, the Northeast Quarter, of the Southeast Quarter, Lot Five (5), and the Southeast Quarter of the Southwest Quarter of Section Nineteen (19), in Township Fifty-four (54), Range Twelve (12); and by the Franklin Lumber Company from the Southeast Quarter of the Northwest Quarter and the Northeast Quarter of the Southwest Quarter of Section One (1), in Township Fifty-four (54), Range Thirteen (13), to be of too unsubstantial a character to justify an injunction.

(9) In adjudging the complainants not entitled to an accounting for the value of timber cut by the defendants Kelley and Cloquet Lumber Company from the lands above mentioned, because no patent had issued for said lands.

(10) In not adjudging the several entries and patents of the defendants to be null and void as having been made after the lands had ceased to be a part of the public domain.

(11) In not adjudging that the complainants had succeeded to an equitable interest and vested right in the several parcels of land in the bill of complaint described duly earned and acquired by the Railroad Company throughout the construction of its road, and though valid selections of indemnity lands duly and regularly made.

(12) In not adjudging that by reason of such prior and vested right and equitable interest complainants are entitled to such legal estates, if any, as may have passed to the 1043 defendants by force of the patents referred to in the fourth column of Exhibit "A" attached to the bill of complaint.

(13) In adjudging that the court had any jurisdiction of the matters set forth in the bill of complaint as to those lands upon which no patents had been issued.

(14) In dismissing the bill of complaint.

Wherefore the appellants pray that the decree of the said Circuit Court of the United States for the District of Minnesota in the above entitled case be reversed,

H. OLDENBERG,
BILLSON, CONGDON & DICKINSON,
J. B. KERR,
Solicitors for Appellants.

Indorsed: Filed Oct. 24th, 1901. Henry D. Lang, Clerk. By Thos. H. Pressnell, Deputy Clerk.

United States Circuit Court, District of Minnesota, Fifth Division, Eighth Circuit.

John A. Humbird and Frederick Weyerheauser, Complainants and Appellants,
vs. In Equity.
Waldo A. Avery, George B. Morley, Olean Land Company, Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, LeRoy Brooks, John B. Kehl, C. M. Hill Lumber Company, June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin

Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Water G. Grimmer, Waldo A. Avery, Trustee, Michael Kelley, Otto Carlson, Alger, Smith & Company, Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, Wiliam O' Brien, Franklin Lumber Company, S. J. Cusson, Johnson-Wentworth Company, Cloquet Lumber Company, Jethro G. Mitchel, LeRoy Brooks and W. C. McClure, as co-partners doing business under the firm name of Mitchell & McClure, Defendants and Appellees.

1044 Know all men by these presents, That we R. M. Weyerheauser and Frank B. Poole are held and firmly bound unto the defendants above named in the sum of Two Thousand Dollars, to be paid to said defendants, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 19th day of October in the year of our Lord One Thousand Nine Hundred and One.

Whereas, the above named complainants have prosecuted an appeal to the United States Circuit Court of Appeals for the Eighth Circuit, to reverse the decree rendered in the above entitled suit, by the Judge of the Circuit Court of the United States for the District of Minnesota, Fifth Division:

Now therefore, the condition of this obligation is such that if the above named appellants shall prosecute said appeal to effect and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

R. M. WEYERHAEUSER. [Seal]
FRANK B. POOLE. Seal]

Signed, Sealed and Delivered
in presence of:
Jos. T. Peacho, Jr.
A. H. Peterson.

State of Minnesota,
County of Carlton—ss.

Be it known that on this 19th day of October A. D. 1901, before me personally appeared R. M. Weyerhauser and Frank B.

Poole to me known to be the persons described in and who executed the foregoing bond, and acknowledged the same to be their free act and deed.

[Notarial Seal]
ALBERT COX,
Notary Public Carlton Co., Minn.

1045 State of Minnesota,
County of Carlton—ss.

R. M. Weyerhaeuser and Frank B. Poole, the sureties named in and who executed the foregoing bond, being first duly sworn, doth each for himself, depose and say, that he is a resident and freeholder of the State of Minnesota, and worth the amount of Two Thousand Dollars above his debts and liabilities and exclusive of his property exempt from execution.

R. M. WEYERHAEUSER.
FRANK B. POOLE.

Subscribed and sworn to before me this 19th day of October, A. D. 1901.

[Notarial Seal]
ALBERT COX,
Notary Public, Carlton County, Minnesota.

Approved this 24th day of October A. D. 1901.
WM. LOCHREN,
United States District Judge, District of Minnesota.

Indorsed: Filed Oct. 24th, 1901. Henry D. Lang, Clerk. By Thos. H. Pressnell, Deputy Clerk.

That on the 26th day of October, A. D. 1901, there was filed with said Clerk the Citation on Appeal in said cause; which said Citation, together with Proof of Service endorsed thereon, is in words and figures, as follows, to wit:

1046 United States of America—ss.

To Waldo A. Avery, George B. Morley, Olean Land Company, Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, LeRoy Brooks, John B. Kehl, C. M. Hill Lumber Company, June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee, Michael Kelley, Otto Carlson, Alger, Smith & Company, Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, S. J. Cusson, Johnson-Wentworth Company, Cloquet Lumber Company; Jethro G. Mitchell, LeRoy Brooks and W. C. McClure, as copartners doing business under the firm name of Mitchell & McClure—Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the date hereof, pursuant to an appeal taken out of and allowed by the Circuit Court of the United States, for the District of Minnesota, Fifth Division, wherein John A. Humbird and Frederick Weyerhaeuser are appellants and Waldo A. Avery, George B. Morley, Olean Land Company, Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, LeRoy Brooks, John B. Kehl, C. M. Hill Lumber Company, June B. Noyes, Isaac Henry, Josepn Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee, Michael Kelley, Otto Carlson Alger, Smith & Company, Justin 1047 Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cook, William O'Brien, Franklin Lumber Company, S. J. Cusson, Johnson-Wentworth Company, Cloquet Lumber Company; Jethro G. Mitchell, LeRoy Brooks and W. C. McClure, as co-partners doing business under the firm name of Mitchell & McClure, are appellees, to show cause, if any there be, why the decree in the said appeal mentioned, should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable William Lochren, United States District Judge for the District of Minnesota, this 24th day of October A. D. 1901.

WM. LOCHREN,
United States District Judge for
District of Minnesota.

1048 Due service of the within citation by copy thereof, is hereby admitted at the City of Duluth, Minn., this 25th day of October, 1901.

H. H. HOYT & S. H. MOER,
JAQUES & HUDSON,
M. H. STANFORD,
TOWNE & HARRIS,
JOHN G. WILLIAMS,
Attorneys for the several defendants for whom they have respectively appeared and answered.

Entered, No. 359. United States Circuit Court, District of Minnesota, Fifth Division. John A. Humbird et al., Complainants, vs. Waldo A. Avery et al., Defendants. Citation on Appeal. Filed Oct. 26th, 1901. Henry D. Lang, Clerk. By Thos. H. Pressnell, Deputy Clerk. H. Oldenburg, Billson, Congdon & Dickinson & J. B. Kerr, Attys. for Complainants,
511 Lonsdale Building, Duluth, Minn.

1049 United States of America.

Circuit Court of the United States—District of Minnesota, Fifth Division.

I, Henry D. Lang, Clerk of said Circuit Court, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals, Eighth Circuit, that the foregoing, consisting of 1049 pages, numbered consecutively from one to 1049 inclusive, is a true and complete transcript of the Records, Process, Pleadings, Orders, Final Decree, and all other proceedings in said cause, to wit, John A. Humbird et al., vs. Waldo A. Avery et al., and of the whole thereof, as appears from the original records and files of said Court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

In witness whereof, I have hereunto set my hand, and affixed the seal of said Court, at Duluth, in the District of Minnesota, this 20th day of November, A. D 1901.

Seal
U. S.
Circuit Court
District of Minnesota,
Fifth Division.

HENRY D. LANG, Clerk.
By Thos. H. Pressnell, Deputy.

Filed Nov. 27, 1901. John D. Jordan, Clerk.

(*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the printed record, to which this certificate is attached, in the case of John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.*, No. 1673, was supervised and printed under my direction from the transcript of record from the circuit court of the United States for the district of Minnesota and is identical with the copy of the printed record upon which said cause was heard in the circuit court of appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court of appeals for the eighth circuit, at office in the city of St. Louis, Missouri, this eighth day of October, A. D. 1902.

Seal United States Circuit Court of Appeals, Eighth Circuit.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1902 of said court, begun and held at the United States court house in the city of St. Paul, Minnesota, on the first Monday in May, to-wit: the fifth day of May, A. D. 1902, before the Honorable Walter H. Sanborn and Honorable Amos M. Thayer, circuit judges, and Honorable John E. Carland, district judge.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered, that heretofore, to wit: on the twenty-seventh day of November, A. D. 1901, a transcript of record pursuant to an appeal from the circuit court of the United States for the district of Minnesota, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, wherein John A. Humbird and Frederick Weyerhaeuser, were appellants, and Waldo A. Avery and others, were appellees, which said transcript of record was docketed in said circuit court of appeals as number 1673.

That thereafter the following proceedings were had in said cause, in said circuit court of appeals, viz:

(*Appearance for Appellants.*)

On the twenty-seventh day of November, A. D. 1901, an appearance of counsel for appellants was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

J. A. Humbird et al., Appellants,
vs.
Waldo A. Avery et al.
No. 1673.

The clerk will enter *my* appearance as counsel for the appellants.
H. OLDENBURG.
WM. W. BILLSON.
CHESTER A. CONGDON.
D. A. DICKINSON.
JAMES B. KERR.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1673. J. A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Appearance. Filed Nov. 27, 1901, John D. Jordan, clerk. H. Oldenburg, Wm. W. Billson, Chester A. Congdon, D. A. Dickinson, James B. Kerr, counsel for appellants.

(*Appearance for Appellants.*)

And on the thirteenth day of May, A. D. 1902, an appearance of Mr. C. W. Bunn, as counsel for appellants was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

John A. Humbird et al., Appellants,
vs.
Waldo A. Avery et al.
No. 1673.

The clerk will enter my appearance as counsel for the appellants.
C. W. BUNN.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Appearance. Filed May 13, 1902, John D. Jordan, clerk. C. W. Bunn, counsel for appellants.

(*Appearance for Appellees.*)

And on the twenty-seventh day of November, A. D. 1901, an appearance of Mr. L. C. Harris, as counsel for certain appellees, was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD and FREDERICK WEYERHAUSER, Complainants and Appellants,
vs.
WALDO A. AVERY, OLEAN LAND COMPANY, ALGER-SMITH & COMPANY, *et al.*, Defendants and Appellees.

You will please enter my appearance as counsel for the defendants, The Olean Land Company and Alger-Smith & Company, in the above entitled action.

Dated November 4, A. D. 1901.

L. C. HARRIS.

To the clerk of the circuit court of appeals.

(Endorsed:) No. 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery *et al.* Appearance for Olean Land Company and Alger-Smith and Company, appellees. Filed Nov. 27, 1901. John D. Jordan, clerk. L. C. Harris, Duluth, Minn., counsel for appellees.

(*Appearance for Appellees.*)

And on the nineteenth day of March, A. D. 1902, an appearance of Mr. H. H. Hoyt, as counsel for the appellees, was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD ET AL., Appellants,
vs.
WALDO A. AVERY ET AL.
No. 1673.

The clerk will enter my appearance as counsel for the appellees.

H. H. HOYT.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Appearance. Filed Mar. 19, 1902, John D. Jordan, clerk. H. H. Hoyt, 310 Manhattan building, Duluth, Minn., counsel for appellees.

(*Appearance for Appellees.*)

And on the thirty-first day of March, A. D. 1902, an appearance of Mr. M. H. Stanford, as counsel for certain appellees, was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit. In Equity.

John A. Humbird and Frederick Weyerhaeuser, Appellants,
vs.
Waldo A. Avery, George B. Morley, Olean Land Company, Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, Le Roy Brooks, John B. Kehl, C. M. Hill Lumber Company, June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grim, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie G. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee; Michael Kelly, Otto Carlson, Alger Smith & Company, Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Morris Realty Company, Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward E. Manwaring, B. C. Cook, William O'Brien, Franklin Lumber Company, S. J. Cusson, Johnson-Wentworth Company, Cloquet Lumber Company, Jethro G. Mitchell, Le Roy Brooks and W. C. McClure, as Co-partners Doing Business under the Firm Name of Mitchell & McClure, Respondents and Appellees.

The clerk of this court will please enter my appearance as solicitor and counsel for The Lesure Lumber Company one of the respondents in the above entitled case.

Dated this 29th day of March, A. D. 1902.

M. H. STANFORD,
Solicitor and Counsel for Respondents and Appellees,
Lesure Lumber Company.

To John D. Jordan, clerk of said court.

(Endorsed:) 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Appearance. Filed Mar. 31, 1902. John D. Jordan, clerk. M. H. Stanford, counsel for certain appellees.

(*Appearance for Appellees.*)

And on the thirteenth day of May, A. D. 1902, an appearance of Mr. Benton Hanchett, as counsel for the appellees, was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

John A. Humbird et al., Appellants,
vs.
Waldo A. Avery et al.
No. 1673.

The clerk will enter my appearance as counsel for the appellees.

BENTON HANCHETT.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Appearance. Filed May 13, 1902, John D. Jordan, clerk. Benton Hanchett, Saginaw, Mich., counsel for appellees.

(*Argument Commenced.*)

And on the thirteenth day of May, A. D. 1902, in the record of the proceedings of said circuit court of appeals is an entry in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1902.

TUESDAY, *May* 13, 1902.

JOHN A. HUMBIRD ET AL., Appellants, *vs.* WALDO A. AVERY ET AL.	No. 1673. Appeal from the Circuit Court of the United States for the District of Minnesota.

This cause having been called for hearing in its regular order, the time for argument of this cause was extended one hour to each side, upon application of counsel for appellants.

Whereupon argument was commenced by Mr. C. W. Bunn, for the appellants and continued by Mr. Benton Hanchett for appellees, and the hour of adjournment having arrived further argument was postponed until tomorrow.

(*Order of Submission.*)

And on the fourteenth day of May, A. D. 1902, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1902.

WEDNESDAY, *May* 14, 1902.

JOHN A. HUMBIRD ET AL., Appellants, *vs.* WALDO A. AVERY ET AL.	No. 1673. Appeal from the Circuit Court of the United States for the District of Minnesota.

This cause having been called for further hearing, argument was continued by Mr. Hanchett for appellees and concluded by Mr. William W. Billson for appellants.

Thereupon, this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

(Order to Certify Questions to Supreme Court.)

And on the sixteenth day of June, A. D. 1902, in the record of the proceedings of said circuit court of appeals, is an order to certify questions to the Supreme Court of the United States, in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1902.

MONDAY, *June* 16, 1902.

JOHN A. HUMBIRD ET AL., Appellants, *vs.* WALDO A. AVERY ET AL.	No. 1673. Appeal from the Circuit Court of the United States for the District of Minnesota.

In this cause it is now here ordered that certain questions arising upon the record herein, be, and the same are hereby ordered to be certified to the Supreme Court of the United States under the provisions of section six of the act of Congress approved March 3, 1891, for the instruction of the said Supreme Court to this court upon said questions.

Said certificate is as follows, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD and FREDERICK WEYERHAEUSER, Appellants,
versus
WALDO A. AVERY, GEORGE B. MORLEY, OLEAN LAND COMPANY, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, Le Roy Brooks, John B. Kehl, C. M. Hill Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of West Virginia; June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee; Michael Kelley, Otto Carlson, Alger, Smith & Company, a Corporation Organized and Doing Business under the Laws of the State of Michigan; Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; S. J. Cusson, Johnson-Wentworth Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Cloquet Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Jethro G. Mitchell, Le Roy Brooks, and W. C. McClure, as Co-partners Doing Business under the Firm Name of Mitchell & McClure, Appellees.

On certificate from the United States circuit court of appeals of the eighth circuit.

The United States circuit court of appeals of the eighth circuit sitting at the city of St. Paul in the State of Minnesota on the sixteenth day of June, 1902, hereby certifies that from the record in this court in the case above entitled in which John A. Humbird and Frederick A. Weyerhaeuser are appellants and Waldo A. Avery and others are appellees, and which is now pending in this court on an appeal from a decree of the circuit court of the district of Minnesota, these facts appear:

I.

On April 17, 1900, the appellants exhibited their bill against the appellees in the United States circuit court for the district of Minnesota wherein they alleged that by virtue of the congressional grants of land to the Northern Pacific Railroad Company (13 Stat. chapter 217, page 367; 16 Stat. 378, 379), the existence of the conditions and the performance of the acts requisite to entitle that company to the lands described in the bill and the subsequent conveyance of its right to these lands to the appellants, they had become the owners of the entire equitable and beneficial interest in the 10,539 acres of land in the State of Minnesota described in the bill, but that the Secretary of the Interior solely by reason of his erroneous decision that the eastern terminus of the Northern Pacific Railroad Company was at Duluth instead of at Ashland had permitted the appellees to enter these lands, had issued to them final receipts or final certificates to all the lands and had issued and delivered to them patents to more than 3400 acres of these lands.

The appellants prayed for the usual decree to the effect that the appellees held the legal title to the lands in trust for them and that the trust should be executed. The appellees answered the bill, denied its material averments and alleged that they were entitled to the land under the provisions of the sundry civil appropriation act of July 1, 1898 (30 Stat. chapter 546, page 620). Evidence was produced, a final hearing was had in the circuit court, that court dismissed the bill and in due time the complainants appealed to this court from this decree of dismissal and their case is here pending and undetermined.

II.

The lands involved in this suit are within the indemnity limits of the grant to the Northern Pacific Railroad Company and there was such a deficiency of lands in the place limits and in the first indemnity limits of that grant that the railroad company was entitled to select and to receive patents to these lands under the congressional grant to it (13 Stat. chapter 217, section 3, pages 367, 368; 16 Stat. 379). In October, 1883, the Northern Pacific Railroad Company selected these lands in lieu of lands lost from its grant of lands in the place and in the first indemnity limits under the direction and in accordance with the regulations of the Secretary of the Interior. Its selection of these lands was evidenced by lists thereof which were filed in the proper local land office at Duluth in the State of Minnesota in October, 1883, which were accepted and approved by the register and receiver of that office and were immediately transmitted to the Commissioner of the General Land Office. Afterwards and prior to May, 1893, in compliance with directions of the Secretary of the Interior the company specified the particular lands lost from its grant in lieu of which these lands had been selected and matched each tract selected with a tract lost. In making its selections of these lands in 1883 it complied with the regulations and directions of the Secretary, and from that time to this it has complied with every lawful regulation and direction of the Secretary of the Interior or the Commissioner of the General Land Office relative to the selection of these lands, so that it was entitled to the approval of its selection thereof and to patents to them for at least five years before the act of July 1, 1898, (30 Stat. 621) was passed. Notwithstanding the grant to the company and the selection of said lands in the manner and form aforesaid, the Secretary of the Interior failed to approve said selection lists and failed to issue patents therefor to the railroad company until and after August 27, 1896, at which latter date he erroneously decided that the eastern terminus of the Northern Pacific railroad was at Duluth, when he should have decided that it was at Ashland, Wisconsin. As the lands in controversy lie east of the city of Duluth in the State of Minnesota, the company would not have been entitled to select the lands as part of the grant if the decision of the Secretary, as to the eastern terminus of the company's road had been right, but it was entitled to select them, as the true terminus of said road as it was afterwards decided was at Ashland, Wisconsin. In consequence of the erroneous ruling of the Secretary of the Interior as to the eastern terminus of the railroad, the lists of selections aforesaid have never as yet been approved by the Secretary of the Interior but after such erroneous decision was made, in the year 1896, the Secretary of the Interior caused the entries of said lands, by the company, to be cancelled, declared the lands open to settlement and entry, and proceeded to issue final receipts and final certificates, and, in some instances, patents for said lands, to the appellees or their grantors, under the public land laws of the United States, holding that the railroad company had no right thereto.

III.

Prior to the passage of the act of July 1, 1898, the Secretary of the Interior had, pursuant to his erroneous ruling relative to the eastern terminus of the railroad in question, caused patents to be issued and delivered to the appellees or their grantors for about thirty-four hundred (3400) acres of the lands in question in this suit.

IV.

At the time of the passage of the act of July 1, 1898, (30 Stat., 621) about 2800 acres of the land in question in this suit had been entered by the appellees or their grantors prior to January 1, 1898. but no patents therefor had been issued.

V.

Since January 1, 1898, the appellees or their grantors have been permitted to enter about 5000 acres of the lands in controversy in this action. The situation at the time of the filing of the bill of complaint herein was as follows: Of the lands claimed by the appellants as successors in interest of the Northern Pacific Railroad Company about 3400 acres thereof were held by the appellees under patents issued by the Government prior to July 1, 1898. For the residue of the lands the appellees held final receipts and final certificates. Such final receipts and final certificates as respects about 5000 acres being for tracts of land that were entered subsequent to January 1, 1898. As respects the lands for which final receipts and certificates have been issued nothing, so far as appears, remains to be done by the executive department of the Government save the issuance of patents.

VI.

The Northern Pacific Railroad Company accepted the terms and provisions of the act of July 1, 1898, by a resolution duly enacted and approved by its board of directors, and subsequently and before the commencement of this suit all of its right, title and interest in all of the lands in question was duly conveyed to, and vested in the appellants.

And the United States circuit court of appeals hereby certifies that to the end that it may properly decide this case it desires the advice and instruction of the Supreme Court of the United States upon the following questions of law, which are duly raised and presented by the record herein and the decision whereof is necessary to a correct determination of the case:

1. Is the act of July 1, 1898, (*vide* 30 Stat., pp. 620, 621) applicable to the determination of the rights of the parties to the 3400 acres of land aforesaid which were patented to the appellees or their predecessors in interest prior to the adoption of the act of July 1, 1898?

2. Has the circuit court of the United States for the district of Minnesota or any court jurisdiction as respects the lands in controversy entered subsequent to January 1, 1898, and for which the appellees hold final receipts or certificates, to adjudicate the rights of the parties to this action in respect to said lands in advance of the issuance of patents therefor by the executive branch of the Government, or should the courts decline jurisdiction until the Government has divested itself of the legal title to the lands by the issuance and delivery of patents?

In witness whereof, the undersigned judges of the said United States circuit court of appeals for the eighth circuit have hereunto set their hands this 16th day of June, 1902, at St. Paul in the State of Minnesota and hereby order and direct that the foregoing certificate be filed in said circuit court of appeals and that it be forwarded by the clerk of said court to the Supreme Court of the United States.

WALTER H. SANBORN,
AMOS M. THAYER,
JOHN E. CARLAND,
Judges of the United States Circuit Court of Appeals for the Eighth Circuit.

United States Circuit Court of Appeals for the Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing certificate in the case of John A. Humbird and Frederick Weyerhaeuser, appellants, *vs.* Waldo A. Avery, *et al.*, No. 1673, May term, 1902, was duly filed and entered of record in my office by order of said court and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

[SEAL.] In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States circuit court of appeals for the eighth circuit, at the city of St. Paul, Minnesota, this sixteenth day of June, A. D. 1902.

(Signed) JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

[Endorsed:] U. S. circuit court of appeals eighth circuit. May term, 1902. No. 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Copy of certificate of questions to the Supreme Court. Filed Jun-16, 1902, John D. Jordan, clerk.

(*Order for Injunction.*)

And on the sixteenth day of June, A. D. 1902, in the record of the proceedings of said circuit court of appeals is an order for injunction in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1902.

Monday, *June* 16, 1902.

John A. Humbird and Frederick Weyerhaeuser, Appellants,

vs.

Waldo A. Avery, George B. Morley, Olean Land Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, Le Roy Brooks, John B. Kehl, C. M. Hill Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of West Virginia; June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee; Michael Kelley, Otto Carlson, Alger, Smith & Company, a Corporation Organized and Doing Business under the Laws of the State of Michigan; Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a Company Organized and Doing Business under the Laws of the State of Minnesota; S. J. Cusson, Johnson-Wentworth Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Cloquet Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Jethro G. Mitchell, Le Roy Brooks, and W. C. McClure, as Co-partners Doing Business under the Firm Name of Mitchell & McClure, Appellees.

No. 1673.

Appeal from the circuit court of the United States for the district of Minnesota.

This case was argued and submitted to this court for consideration on the fourteenth day of May, A. D. 1902. It involves the decision of grave questions of law which have been certified to the Supreme Court for determination. Considerable time must elapse before a final determination of the rights of the parties to the title of the lands in question in this suit can be reached and it is important that meanwhile the lands remain in the same condition in which they now are. Upon due consideration, It is ordered and adjudged that a writ of injunction issue out of and under the seal of this court directed to the appellees, their grantees, agents and servants, which shall command and strictly enjoin them and each of them to refrain from cutting or removing from any of the lands described in Exhibit A to the bill herein any timber or wood standing or lying thereon and from in any other way changing the state and condition in which such lands and the timber thereon now are until the final decision of this case or the further order of the court.

(*Writ of Injunction.*)

And on the second day of August, A. D. 1902, a writ of injunction was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Eighth Circuit.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to Walto A. Avery, George B. Morley, Olean Land Company, a corporation organized and doing business under the laws of the State of Minnesota; Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, Le Roy Brooks, John B. Kehl, C. M. Hill Lumber Company, a corporation organized and doing business under the laws of the State of West Virginia, June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, trustee; Michael Kelley, Otto Carlson, Alger, Smith & Company, a corporation organized and doing business under the laws of the State of Michigan; Justin Wentworth, George K. Wentworh, Herbert H. Hoyt, John R Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a corporation organized and doing business under the laws of the State of Minnesota; Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota; S. J. Cusson, Johnson Wentworth Company, a corporation organized and doing business under the laws of the State of Minnesota; Cloquet Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota; Jethro G. Mitchell, Le Roy Brooks, and W. C. McClure, as co-partners doing business under the firm name of Mitchell and McClure, Greeting:

Whereas, in a certain suit in the United States circuit court of appeals for the eighth circuit removed there by the appeal of the complainants from the circuit court of the United States for the district of Minnesota, in which latter court John A. Humbird and Frederich Weyerhaeuser were complainants and you are respondents in chancery.

And whereas, the said circuit court of appeals by its order entered in this cause on the sixteenth day of June, A. D. 1902, ordered and directed that certain questions of law arising upon the face of the record herein be certified to the Supreme Court of the United States for the instruction of that court thereon, in pursuance of the provision of the act of Congress approved March 3, 1891, and by its further order also directed that an injunction issue herein pending the final determination of the rights of the parties to the title of the lands in question in this suit.

You and each of you, your grantees, agents and servants are hereby commanded and strictly enjoined to refrain from cutting or removing from any of the lands described in Exhibit A. to the bill of complaint herein, any timber or wood standing or lying thereon, and from in any other way changing the state and condition in which such lands and the timber thereon now are until the final decision of this case or the further order of this court, and this you shall in no wise omit at your peril.

To the marshal of the United States for the district of Minnesota to execute and make due return.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this sixteenth day of June A. D. 1902.

Issued at office in the city of St. Paul, Minnesota, in the eighth circuit, under the seal of said United States circuit court of appeals, the day and year last above written.

[SEAL.] (Signed) JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals
for the Eighth Circuit.

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD and FREDERICK WEYERHAEUSER, Appellants,
vs.
WALDO A. AVERY ET AL., Respondents.

Service, on behalf of all the defendants in the above entitled cause for whom we have appeared and answered, of the within writ of injunction, by copy thereof, is hereby admitted at the city of Duluth, Minnesota, this 23rd day of July, 1902.

H. H. HOYT,
Attorneys for All Defendants for Whom
We *Have Appeared and Answered.*
JAQUES & HUDSON,
Attorneys for All Defendants for Whom
We Have Appeared and Answered.
JOHN G. WILLIAMS,
Attorneys for All Defendants for Whom
We *Have Appeared and Answered.*
M. H. STANFORD,
Attorneys for All Defendants for Whom
We *Have Appeared and Answered.*
L. C. HARRIS,
Attorneys for All Defendants for Whom
We *Have Appeared and Answered.*

(Endorsed:) U. S. circuit court of appeals, eighth circuit. May term, 1902. No. 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Writ of injunction. Filed Aug. 2, 1902. John D. Jordan, clerk.

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing twelve pages contain full, true and complete copies of all the pleadings, record entries and proceedings in the United States circuit court of appeals for the eighth circuit (except the transcript of the record from the circuit court of the United States for the district of Minnesota), in a certain cause in said court wherein John A. Humbird and Frederick Weyerhaeuser are appellants, and Waldo A. Avery, *et al.*, are appellees, No. 1673, as full, true and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court of appeals, at the city of St. Louis, Missouri, in the eighth circuit, this eighth day of October, A. D. 1902.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court
of Appeals for the Eighth Circuit.

[Endorsed:] U. S. circuit court of appeals eighth circuit. No. 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Certified transcript of proceedings in U. S. circuit court of appeals in the above entitled cause.

Supreme Court of the United States, October Term, 1902.

JOHN A. HUMBIRD ET AL., Appellants,
vs. } No. 382.
WALDO A. AVERY ET AL.

On consideration of the motions for leave to the United States to intervene herein, that the whole record and cause be required to be sent up, and that the cause be advanced,

It is now here ordered by the court that said motions be, and the same are hereby, granted, the certified transcript of record presented with the motions to stand as a return to this order; and that this cause be, and the same is hereby, assigned for argument on Monday, October 19th, 1903, after the case heretofore assigned for that day.

December 1, 1902.

[Endorsed:] File No. 18610. Supreme Court U. S. No. 382 October term, 1902. Order Filed Dec. 1, 1902.

Endorsed on cover: File No. 18,610. U. S. C. C. of appeals, 8th circuit. Term No. 89. John A. Humbird *et al.* *vs.* Waldo A. Avery *et al.* Certified transcript of proceedings in U. S. circuit court for district of Minnesota & U. S. circuit court of appeals for eighth circuit. **Filed December 1st, 1902. (By order of court.)**

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SUPREME COURT
OF THE UNITED STATES.

OCTOBER TERM A. D. 1903.

No. 89.

JOHN A. HUMBIRD AND
FREDERICK WEYERHAEUSER,
APPELLANTS,
AGAINST
WALDO A. AVERY, ET AL.,
RESPONDENTS,
THE UNITED STATES,
INTERVENOR.

CERTIFICATION FROM UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR APPELLANTS.

STATEMENT OF CASE.

By the United States Circuit Court of Appeals for the Eighth Circuit, before whom this cause was pending on an appeal by complainants from a decree of the Circuit Court for the District of Minnesota dismissing the bill at final hearing, (Record p. 846-7), two of the mooted questions of law were certified to this court. (Record p. 865). Afterwards, on motion of the parties litigant and of the United States, the whole record and cause were required by order of this court to be sent up for its consideration; and the United States, as being interested in its speedy and accurate determination, was permitted to intervene. It was further ordered, that the certified transcript of the complete record which was presented with the motion, should stand as a return to the order.

The suit has for its subject matter, the title to ten thousand five hundred and thirty-nine (10,539) acres of land, lying in odd numbered sections in Minnesota north of Lake Superior, and east of Duluth, partly in the first indemnity belt of the Northern Pacific Railroad Company, under its land grant of July 2nd, 1864, (13 U. S. Stats., p. 365), and partly in its second indemnity belt as established by the Joint Resolution of May 31st, 1870, (16 U. S. Stats., p. 378), and appertaining to the section of the road extending from Thomson Junction in Minnesota, to the eastern terminus, at a point near Ashland, Wisconsin.

The title of the complainants is derived through two warranty deeds of January 19th, 1900, from the Northern Pacific Railway Company, (Exhibits 50 and 51, pp. 499 and 503 of Record), the successor of the Northern Pacific Railroad Company, by which last named company, all these lands had been selected as indemnity lands, as long ago as October, 1883. (Exhibits 19 and 22, pp. 325 and 368 of Record).

The adverse titles of the defendants, had their origin in a decision by the Secretary of the Interior, rendered thirteen years later, August 27th, 1896, (23 L. D. 204), wherein he held that the initial point on Lake Superior, or the eastern terminus, of the grant to the Northern Pacific Railroad Company, was at Duluth, Minnesota; whereupon all selections by the Northern Pacific of lands east of Duluth, were cancelled by the Department, and the selected lands declared a part of the public domain, subject to entry under the general land laws. (Record pp. 429-431).

In pursuance of this decision, and during the years 1896-1900, all the lands here in controversy, were, in form, permitted to be entered at the United States Land Office at Duluth, by sundry persons applying for the same. With the exception of two homestead entries and four scrip entries, all the entries were cash entries under the Timber and Stone Land Law, as described in paragraph 11 and Exhibit "A" of the bill, and admitted by the answer, and as shown by complainants Exhibit 26. (Record pp. 9, 11, 17, 24, 419-426).

On April 16th, 1900, in Doherty vs. Northern Pacific Ry. Co., 177 U. S., 421, it was determined by this court, that the eastern terminus of the Northern Pacific road and grant, is at a point near Ashland, in Wisconsin.

Complainants thereupon filed their bill against all the parties who, either as entrymen or as the grantees of entrymen, claimed interests in any of these lands under the entries thereof which had thus been permitted through the Secretary's misconstruction of law, alleging the same facts which are hereinafter specified in detail as covered by the proofs, and from the recital of which here, we therefore refrain in order to avoid unnecessary repetition; and praying temporary and permanent injunctions against the cutting from the lands, of the timber, which constitutes its principal value; for an accounting for the timber cut and removed either before or after the commencement of the action; for a decree charging as trustees of the lands for complainants, any of the defendants claiming under patents that had been issued under such circumstances as to carry the legal title; and praying with respect to all parcels upon which though not patented, entries had been consumated by final allowance and approval thereof, and by issuance of final certificates thereon, for a decree adjudging complainants the equitable owners thereof, and of the timber standing or lying thereon, and adjudging that the pretended final entries and certificates of the defendants severally, are unlawful and void.

With the few exceptions hereinafter noted, the answers left complainants to the proof of their allegations, and pleaded the acceptance by the Northern Pacific Companies of the provisions contained in the Sundry Civil Appropriations Act of July 1, 1898, relative to the adjustment of controversies between those companies and entrymen claiming public lands adversely, (quoted in full in the next paragraph of this statement) and alleged that in the exercise of an option which they claimed to have been conferred upon them by that act, they had elected to insist upon their several entries.

The final decree of the Circuit Court dismissing the bill after final hearing, was rested upon a construction of the Sundry Civil Act of 1898, as obligating the Railroad Company, upon its acceptance, to relinquish all lands settled upon or purchased by settlers prior to January 1st, 1898, and remaining unsold by the Company on the date of the act, July 1st, 1898. As to all lands settled upon or purchased after January 1st, 1898, relief was denied, upon the ground that no patents had as yet issued for that class of lands.

The Circuit Court refused to enjoin even the two defendants of the latter class who were shown to have already stripped the lands claimed by them of the more valuable portions of the timber. The Circuit Court of Appeals enjoined all defendants from the cutting of timber until further order. (Record p. 867).

The two questions originally certified by the Circuit Court of Appeals, were whether the non-issuance of patents on certain tracts is a bar to relief with respect to such tracts, and whether the Act of 1898 is applicable to lands patented prior to its passage. (p. 865 of Record).

Legislation.

The material portion of the land grant act of July 2nd, 1864, (13 U. S. Stats. p. 365), under which the controversy arises, is as follows:

> "Sec. 3.—*And be it further enacted*, that there be, and hereby is, granted to the 'Northern Pacific Railroad Company,' its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores, over the the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may

> adopt, through the territories of the United States ,and ten alternate sections of land per mile on each side of said railroad, whenever it passes through any state, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption, or other claims or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the commissioner of the general land office; and whenever, prior to said time, any of said sections, or parts of sections, shall have been granted, sold, reserved, occupied by homestead settler, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections * * *"

This law granted *in the states,* the odd sections in a strip of country forty miles in width, (twenty on each side of the railroad),

It established on each side of the place limits, an indemnity belt ten miles in width, within which might be made good, lands lost to the company in the place limits. It says, "other lands shall be selected by the company in lieu thereof, *under the direction of the Secretary of the Interior,* in alternate sections and designated by odd numbers."

It will be observed, that under this act, place land losses, wherever occurring, were to be made good *anywhere* within the indemnity belt, regardless of state or territorial lines. And it is admitted law, that the losses so to be made good include place lands reserved or disposed of by the United States, or covered by claims, *either before or after the passage of the act*, down to the date of definite location of the railroad.

The material portion of the Joint Resolution of May 31st, 1870, (16 U. S. Stats., p. 378), whereby there were established "second indemnity limits," viz., two strips of land each ten miles wide, one on either side of the road outside of the "first indemnity limits," is as follows:

> "And in the event of there not being in any state or territory, in which said main line or branch may be located, at the time of the final location thereof, the amount of lands per mile granted by Congress to said company, within the limits prescribed by its charter, then said company shall be entitled, under the directions of the Secretary of the Interior, to receive so many sections of land belonging to the United States, and designated by odd numbers, in such state or territory, within ten miles on each side of said road beyond the limits prescribed in said charter, as will make up such deficiency, on said main line or branch, except mineral and other lands as excepted in the charter of said company of eighteen hundred and sixty-four, to the amount of lands that have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of subsequent to the passage of the act of July two, eighteen hundred and sixty-four * * *"

It will be noticed that these second indemnity limits are unlike the first, in this: (a). They can be resorted to only for losses *in the same state or territory*; (b). And only for losses occurring *after* the act of July 2nd, 1864, and prior to definite location.

The material provisions of the Sundry Civil Act of July 1st, 1898, are as follows:

"That where, prior to January first, eighteen hundred and ninety-eight, the whole or any part of an odd numbered section, in either the granted or indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of the grantee or its lawful successor is claimed to have attached by definite location or selection, has been purchased directly from the United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department, and where purchaser, settler or claimant refuses to transfer his entry as hereinafter provided, the railroad grantee or it successor in interest, upon a proper relinquishment thereof, shall be entitled to select in lieu of the land relinquished an equal quantity of public lands, surveyed or unsurveyed, not mineral or reserved and not valuable for stone, iron or coal, and free from valid adverse claim or not occupied by settlers at the time of such selection, situated within any state or territory into which such railroad grant extends, and patents shall issue for the land so selected as though it had been originally granted; but all selections of unsurveyed lands shall be of odd numbered sections, to be identified by the survey when made, and patent therefor shall issue to and in the name of the corporation surrendering the lands before mentioned, and such patents shall not issue until after the survey: *Provided, however,* That the Secretary of the Interior shall from time to time ascertain and, as soon as conveniently may be done, cause to be prepared and delivered to the said railroad grantee or its successor in interest a list or lists of the several tracts which have been purchased or settled upon or occupied as aforesaid, and are now claimed by said purchasers or occupants, their heirs or assigns, according to the smallest government subdivisions. And all right, title and interest of the said railroad grantee or its successor in interest in and to any of such tracts, which the said railroad grantee or its successor in interest may relinquish hereunder shall revert to the United States, and such tracts shall be treated, under the laws thereof, in the same manner as if no rights thereto had ever vested in the said railroad grantee, and all qualified persons who have occupied and may be on said lands as herein provided, or who have purchased said lands in good faith as aforesaid, their heirs and assigns, shall be permitted to prove their titles to said lands according to law, as if said grant had never been made; and upon such relinquishment said Northern Pacific Railroad Company or its lawful successor in interest may proceed to select, in the manner hereinbefore provided, lands in lieu of those relinquished, and patents shall issue therefor: *Provided further*, That the railroad grantee or its successor in interest shall accept the said list or lists so to be made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it, but it shall not be bound to relinquish lands sold or contracted by it or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron or coal: *And provided further*, That whenever any qualified settler shall in good faith make settlement in pursuance of existing law upon any odd numbered sections of unsurveyed public lands within the said railroad grant to which the right of such railroad grantee or its successor in interest has attached, then upon proof thereof satisfactory to the Secretary of the Interior, and a due relinquishment of the prior railroad right, other lands may be selected in lieu thereof by said railroad grantee or its successor in interest, as hereinbefore provided, and patents shall issue therefor: *And provided further,* That nothing herein contained shall be construed as intended or having the effect to recognize the Northern Pacific Railway Company as the lawful successor of the Northern Pacific Railroad Company in the ownership of the lands granted by the United States to the Northern Pacific Railroad Company, under and by virtue of foreclosure proceedings against said Northern Pacific Railroad Company in the courts of the United States; but the legal question whether the said Northern Pacific Railway Company is such lawful successor of the Northern Pacific Railroad Company, should the question be raised, shall be determined wholly without reference to the provisions of this Act, and nothing in this Act shall be construed as enlarging the quantity of land which the said Northern Pacific Railroad Company is entitled to under laws heretofore enacted: *And provided further,* That all qualified settlers, their heirs or assigns, who, prior to January first, eighteen hundred and ninety-eight, purchased or settled upon or claimed in good faith, under color of title or claim of right under any law of the United States or any ruling of the Interior Department, any part of an odd numbered section in either the granted or indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of such grantee or its lawful successor is claimed to have attached by definite location or selection, may in lieu thereof thansfer their claims to an equal quantity of public lands surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron or coal, and free from valid adverse claim, or not occupied by a settler at the time of such entry, situated in any state or territory into which such railroad grant extends, and make proof therefor as in other cases provided; and, in making such proof, credit shall be given for the period of their bona fide residence and amount of their improvements upon their respective claims in said granted or indemnity limits of the land grant to the said Northern Pacific Railroad Company the same as if made upon the tract to which the transfer is made; and before the Secretary of the Interior shall cause to be prepared and delivered to said railroad grantee or its successor in interest any list or lists of the several tracts which have been purchased or settled upon or occupied as hereinbefore provided, he shall notify the purchaser, settler or claimant, his heirs or assigns, claiming against said railroad company, of his right to transfer his entry or claim, as herein provided, and shall give him or them option to take lieu lands for those claimed by him or them, or hold his claim and allow the said railroad company to do so under the terms of this Act."

The legislation is in some respects of an extremely comprehensive character, applying as it does to the claims of certain classes of settlers along the entire length of the Northern Pacific Road. It was potentially or in certain contingencies applicable to all of the vast number of tracts of land which, during a long succession of years, throughout this immense territory, and from a great variety of causes had been settled upon or purchased from the United States adversely to the claim of the Northern Pacific. How many tracts there might be so circumstanced as to fall within the purview of the act was a matter concerning which the company itself could not be supposed to have information even approximating to completeness or accuracy. The company had no means of knowing either what lands had been purchased from the United States, or what lands had been settled upon, or what proportion of such purchases or settlements had been made in that good faith which the statute required as a condition to the proposed relief, or in what cases falling within the act, the settlers would elect to accept lieu lands. Indeed the questions of fact which might have arisen under the act must have been productive of enormous masses of litigation, had it not been expressly conditioned that the lands falling within the operation of the act should be listed by the Secretary of the Interior, and copies of the lists served upon the railroad company and a conclusive force imparted to such lists.

From the following statement of the questions involved in the case, and of the manner in which they arise, it will be seen that they are all ultimately legal, there being no conflict of testimony at any point, except as to the quantity and value of timber cut by two of the defendants, of no moment here.

Location and Construction of the Road.

Upon the hearing of the cause, no question arose as to either the definite location or the construction of the railroad.

That the Northern Pacific Railroad, on November 21st, 1871, was definitely located from Thomson Junction in Minnesota, westwardly to Fargo, Dakota, and on July 6th, 1882, was definitely located from Thomson Junction eastwardly to a point near Ashland in Wisconsin, was admitted in the answers. (Record pp. 45, 68, 82, 102).

The maps of definite location were introduced in evidence as Exhibits 1 and 2. (Record p. 278). Afterwards, to prevent the unnecessary incumbrance of the record with these maps, it was stipulated that the line of definite location as shown in these exhibits, was the same as that indicated in the withdrawal diagrams introduced in evidence as Exhibits 3, 4 and 5. (Record pp. 274, 278, 279, 283, 287). The construction of the road from the point near Ashland, in Wisconsin, to Fargo, in Dakota, was shown by the reports of the Inspection Commissioners, introduced in evidence as Exhibits 15, 16, 17 and 18. (Record pp. 310, 316, 319, 322).

Regularity of the Selections.

In historical, and perhaps in logical order, the first question to arise in the case was whether, prior to the entries of the several defendants, the Northern Pacific Railroad Company had selected these lands as indemnity lands, under such circumstances as to acquire a vested right thereto. The facts bearing upon this question as presented by the pleadings and testimony were as follows:

On October 18th, 1883, the Northern Pacific Railroad Company filed in the local Land Office at Duluth, its Duluth Selection List, No. 10, whereby it selected such of the lands here in controversy as lie within the *first* indemnity limits, to-wit: lands aggregating four thousand four hundred and fifty-one acres. (Exhibit 19, p. 325 of Record).

No losses were at that time specified as a basis for these selections, the specification of losses having been expressly dispensed with by Secretary Teller May 28th, 1883. (Record p. 185).

Complying with later instructions of the Department, the Railroad Company, October 10th, 1887, filed in the local land office at Duluth, a designation in bulk, of the losses on account of which said selections were made, all in accordance with the then existing regulations of the Department. (Exhibit 20, p. 332 of Record). Thereafter, and in pursuance of still later instructions, the Railroad Company, on July 19th, 1891, filed in the same office a list in which the losses were rearranged, so that those which in the list of 1887, were specified in bulk, were arranged tract for tract opposite the lands selected in the original list.

On October 18th, 1883, the Northern Pacific Railroad Company also filed in the local Land Office at Duluth, its Duluth Selection Lists, Nos. 15 and 16, whereby it selected as indemnity, such of the lands here in controversy as lie within the *second* indemnity limits, to-wit: Six thousand and eighty-eight acres. (Exhibits 22 and 24, Record pp. 368 and 406). These two lists specified losses in bulk, and on April 11th, 1893, upon copies these lists, designated respectively list No. 15 B. and list No. 16, and filed in the same office, the losses previously specified in bulk were arranged tract for tract with the selected lands. (Exhibits 23 and 25, Record pp. 379, 411).

That at the time of these selections by the Railroad Company, and of these subsequent specifications of losses, the lands in controversy were, except for these selections, unappropriated public lands, is shown by transcript from the tract books of the local Land Office at Duluth, introduced in evidence as Exhibit 26, (p. 419 of Record).

That the lands are non-mineral is established by the testimony of persons familiar with them, and is not controverted. (Witnesses Cameron and Seely, pp. 205, 220, 221).

That the lands selected as first indemnity are all distant more than twenty and less than thirty miles, and those selected as second indemnity, more than thirty and less than forty miles, from the line of the road as definitely located between Thomson Junction and the eastern terminus, is shown by withdrawal diagrams prepared by the General Land Office, establishing and exhibiting the several limits of the grant, and introduced in evidence as Exhibits 3, 4 and 5 (pp. 279, 283, 287), and by the Department letters enclosing such diagrams to the local Land Office, and relating to such withdrawals, marked Exhibits 8, 9, 10, 11, 12 and 13, (pp. 295 to 303 of Record).

(The legal force of the Department's determinations of these limits has not been, and we suppose will not be, questioned. The subject will, however, be found briefly discussed at page 119 *infra*).

That the lands lost from the place limits, and assigned in the revised lists as specific bases for these selections, were lost at such times and under such circumstances as to constitute valid bases for these selections, is shown by transcripts from the Land Offices at Duluth, Crookston and St. Cloud, introduced in evidence as Exhibits 27, 28 and 44, (pp. 427, 428 and 485), and by the transcript of State Swamp Land Selection introduced in evidence as Exhibit 14, (p. 304). These transcripts show that all parcels relied upon as bases for any of these selections, were lost prior to the date of definite location opposite the same, and that all parcels relied upon as bases for the selection of second indemnity lands, were also lost after the date of the original grant, July 2nd, 1864.

The only question of law or fact arising with reference to the validity of any of the designated bases of lost lands, relates to four particular parcels concerning which the question arises, whether they were inadequate bases for the selection of lands within the second indemnity limits, because prior to the date of the Northern Pacific grant, they had, by the Commissioner of the General Land Office, been withdrawn for the accommodation of the Lake Superior & Mississippi Railroad, in pursuance of the location of its *general route.* The validity of these four bases is pointed out at pages 99-101, 123-140 of this brief, where also they will be found specifically described.

That none of the lost lands assigned as bases for these selections have ever been used as bases for the selection of other lands, is shown from an examination of the records of the Railroad Division of the General Land Office. (pp. 154, 155). The question raised by defendants' objection to this testimony as incompetent is in principle identical with that discussed *infra* pp. 115-118.

That all the selections were made by an agent of the company, duly authorized thereto, under the corporate seal, as required by regulation, was shown by certified transcript of the authority. (Exhibit 47, p. 493 of Record).

The only respects in which it was claimed by defendants that the selection lists failed to conform to the regulations or directions which in that behalf had been prescribed by the Secretary of the Interior, and which were introduced in evidence as Exhibit 65, (Record pp. 541-564) were the following:

In matters of *form*, the lists were questioned in two particulars:

(a). By a regulation first promulgated in 1885, (4 L. D. 90), the affidavit verifying selection lists was required to state "that the specific losses for which indemnity is claimed are truly set forth and described in the list, and that said losses have not heretofore been indemnified in any manner." Though these selections were made in 1883, defendants claim them invalid for non-observance of this regulation. Discussed *infra*, pp. 142-145.

(b). The lists were claimed to be defective in not showing, tract for tract, the lands selected for lands lost, notwithstanding the circular of Secretary Teller of May 28th, 1883, expressly dispensing with such specification of losses by the Northern Pacific Company. Discussed *infra*, pp. 146-148, where the Teller circular, (also found at p. 185 of Record), is reproduced.

It was also claimed by defendants that the selection lists were defective by reason of their non-observance of the following three alleged limitations on the right of selection.

(1). It appeared from the lists that the lands had been selected upon either side of the road indiscriminately, without reference to the side of the road upon which the lost lands designated as specific bases, were situate. Defendants contended that each selection must be made upon the same side of the road with its designated base of lost land. The proposition was rested upon a construction by this court in U. S. vs. Burlington & Mo. Riv. R. R. Co., 98 U. S., 334, of the very peculiar phraseology of the Burlington & Missouri River grant, which bears no analogy to the terms of the Northern Pacific act. Discussed *infra*, pp. 148-151.

(2). There were no proofs that the selected lands were the nearest available tracts to those lost and assigned as specific bases for the selections. Upon the strength of a Departmental requirement, which, as conceded by Secretary Smith in 20 L. D. 187, 189, was first sought to be imposed upon the Northern Pacific Company August 4th, 1885, (two years after these selections had been made), it was contended by defendants that such proofs were necessary. Discussed *infra*, pp. 151,153.

(3). There were no proofs that before selecting lands in the second indemnity limits, the company had exhausted all available lands in the first indemnity limits along the entire length of the road from Lake Superior to Puget Sound and Portland. Not upon any terms of the granting act, but upon some assumptions of public policy, which we are unable to restate, it is argued by defendants that such proofs were necessary, although the express language of the joint resolution providing for second indemnity as hereinbefore quoted is, that "in the event of there not being *in any state or territory* in which said main line or branch may be located at the time of the final location thereof, the amount of lands per mile granted by Congress to said company, within the limits prescribed by its charter, then the said company shall be entitled, etc." Discussed pp. 153-154 *infra.*

Proofs of Aggregate Losses and Selections.

Proofs were adduced by complainants, not only of the losses of the tracts specifically designated as the bases of these selections, but of the fact that the Company, at the time of the selections, had to its credit large unsatisfied, or net losses, after applying all previous selections. Detailed reference to these proofs will be found *infra*, pp. 99-113. No *conflicting* proofs were offered by defendants. It was deemed appropriate to remove all possible cloud from these selections, by showing the actual extent of the company's unsatisfied valid claims to first indemnity and second indemnity lands. To avoid unnecessary confusion, however, it must be borne in mind, that for the purposes of this case, it is incumbent upon the complainants to show unsatisfied or net losses, only to the aggregate acreage of the lands covered by these selections, to-wit: forty-four hundred and fifty-one (4451) acres of first indemnity lands, and six thousand and eighty-eight (6088) acres of second indemnity lands. The only questions arising in this connection are the following questions of law:

(1). As to the competency of certain elaborate reports upon this subject made by the Commissioner of the General Land Office to the Secretary of the Interior, under date of June 7th, 1900, and May 3rd, 1900. By the former of these reports, it was shown by the Commissioner, that after charging the Company with all of the lands now vacant in the first indemnity limits, there still remained unsatisfied losses from the place limits to the amount of six hundred and seventy-five thousand five hundred and eighty-eight (675,588) acres. (Exhibit 36, pp. 435, 436 of Record). By the latter report, the Company was shown to have a subsisting credit of unsatisfied losses in the State of Minnesota, to the amount of twenty-seven thousand six hundred and seventy-eight (27,678) acres, which it was still entitled to satisfy from the second indemnity lands in that state. The question of the competency of these reports as evidence of the deficiencies shown by them, is discussed *infra* pp. 113-115.

(2). The report of the Commissioner of May 3rd, 1900, relative to the second indemnity losses, showed upon its face, as claimed by the complainants, that he had by errors of law and by inadvertences, disallowed or rejected as not being second indemnity losses, several groups of lands aggregating fifty-nine thousand six hundred and sixty-seven (59,667) acres which he should have allowed, so that his report, when purged of its legal errors and inadvertences, established a subsisting credit of eighty-seven thousand three hundred and forty-five (87,345) acres still to be satisfied out of the second indemnity limits in Minnesota.

The grounds of these several corrections are stated *infra* pp. 104-109, and the only one of them, which as we suppose, is seriously challenged by the defendants, has reference to thirteen thousand seven hundred and fifty-two acres (13,752) of land, which in May, 1864, (a couple of months prior to the Northern Pacific grant) had been withdrawn from sale by the Commissioner of the General Land Office, for the benefit of the Lake Superior & Mississippi Railroad Company, which had received its grant May 15th, 1864, but whose line was not definitely located until November 2nd, 1866; and within whose *indemnity* limits these lands were, upon such definite location, found to fall.

Whether these lands were so lost as to be valid bases for Northern Pacific second indemnity selections, depends upon whether they are to be regarded as having been lost by virtue of this withdrawal on location of general route of the L. S. & M. road. At this point, therefore, the record presents the general question, whether a withdrawal of lands on location of the general route of one land grant railroad, is such a segregation of them from the public domain, as to withdraw them from the operation of a subsequent legislative grant. Discussed at pp. 123-130 *infra*.

The point is material in the case, not only upon this question of the aggregate of the Northern Pacific second indemnity losses, but by reason of the fact that, as heretofore pointed out, four tracts out of this group of lands, are among the specific losses assigned *for the selection of four of the indemnity tracts included in these lists.* (See *infra,* pp. 99-100).

(3). It was shown by the defendants that from time to time during the administration of the Northern Pacific grant, large numbers of tracts of land had been selected as indemnity by the company, and had afterwards been relinquished by the company, and otherwise disposed of by the Government. This circumstance is made the basis of a claim by the defendants, that all these relinquished lands should have been charged up by the Commissioner against the company, as though never relinquished. Discussed *infra*, pp. 141-2.

(4). In order to corroborate the findings of the Commissioner of the General Land Office, that at the date of these selections, the Northern Pacific Railroad Company had still to its credit large unsatisfied losses, for which it was entitled to select lands in both the first and second indemnity limits, complainants offered in evidence the testimony of Mr. Earl L. Marvin, an expert in land office records, as to the result of a several months' examination of the General Land Office records. Detailed references to his testimony, which showed even larger credits of both first and second indemnity net losses than were shown by the reports of the commissioner as corrected, will be found *infra*, pp. 109-113. Mr. Marvin found upon the records unsatisfied second indemnity losses in Minnesota to the amount of one hundred and forty-seven thousand six hundred and eighty-six (147,686) acres.

This testimony was offered by complainants, upon the ground of the extreme voluminousness of the facts to be established, and was received against the defendants' objection. Its admissibility is discussed at pp. 115-118 *infra*.

The figures of both the commissioner and Mr. Marvin, were compiled upon the theory ,that under the second indemnity resolution of 1870, above quoted, selections can be made within the second indemnity limits, only on account of lands lost from the place limits. We maintain, on the contrary, that the resolution provides as explicitly as language could, for the reimbursement of the company within the second indemnity limits for all lands lost from the combined place and first indemnity limits between the date of the grant the date of definite location. Discussed *infra* pp. 120-122. Upon this view of the law, there are still due to the Company in Minnesota seven hundred and fourteen thousand three hundred and twenty-one (714,321) acres of second indemnity lands. (*Infra*, p. 112.

Legal Effect of the Selections.

The proofs were that the selection lists were duly accepted and approved by the local land officers (pp. 332, 345, 378), and duly transmitted to the General Land Office, where they are now on file, but that no action has ever been taken upon them by the Secretary of the Interior, except that thirteen years after the selections were made, they were, by the Secretary. ordered cancelled, upon the mistaken theory that there was no grant east of Duluth, (pp. 428½-431), which order was rescinded after its error of law had been established, by Doherty vs. N. P. Ry. Co., 177 U. S., 421, (pp. 491, 492 of Record).

Section three of the act of July 2, 1864, above quoted, provides that the indemnity lands shall be selected by the company "under the direction of the Secretary of the Interior." This clause, as applied to the facts of this case, presents three questions:

(1). Is it undistinguishable from the many land grant acts which require the indemnity selections to be made *by the Secretary* of the Interior, or to be made by the company, "*subject to the approval of the Secretary* of the Interior?"

(2). Even when the Secretary's approval is required, is its absence material where, as here, the Secretary has awarded the land to the wrong party by mistake of law?

(3). If approval is necessary under the Northern Pacific act, should *third parties* be heard to argue the absence of *formal* approval after verification and approval by local land officers, and thirteen years of silent acquiescence by the Secretary?

Complainants' Succession to R. R. Title.

The succession of complainants to such interest as the Railroad Company had acquired in these lands was established by Exhimits 39, 40, 41 and 42, (pp. 448, 455, 459, 468), showing a judicial transfer of the title from the Northern Pacific Railroad Company to the Northern Pacific Railway Company; by Exhibit 43, (Record, p. 478), being a voluntary deed from the former company to the latter; and by two deeds already referred to, from the Northern Pacific Railway Company to the complainants, (Exhibits 50 and 51, pp. 499, 503 of Record).

The only questions raised with reference to the sufficiency of these proofs, are the following:

(a). Ignoring entirely the voluntary deed from the Railroad Company to the Railway Company, the efficacy of the judicial sale in confirmation of which the voluntary deed was given, is denied upon minor technical grounds. Discussed *infra*, pp. 158-9.

(b). There were no formal proofs of the incorporation of the Northern Pacific Railway Company, through whom the title passed to complainants. It is contended by defendants that such proofs were necessary. Discussed *infra*, pp.———

Defendants' Title.

As to the titles of the several defendants, and the character, dates, etc., of the Land Office entries upon which they rested, they are shown by Exhibit "A", attached to and made a part of the bill, and admitted by the answers, which is a scheduled statement of these details; and by complaintants' Exhibit 26, (Record pp. 419-426), which is a complete transcript of the tract books of the local Land Office, relative to all the lands in controversy. As to whether the allegations of the bill relative to and contained in its Exhibit "A" were admitted by the answers, question was raised by the defendants, which is discussed *infra*, pp. 160-162.

It was averred by the bill (paragraph 12, pp. 11 and 12 of Record), and admitted by the answers (pp. 57 and 58 of Record), that except for the rights vested in the Northern Pacific Railroad Company, all the entries under which the several defendants claimed were regular and valid and "would have been authorative and effectual to invest the several entrymen of said lands with complete equitable title thereto, each of such entries and locations having been finally receipted for, allowed and approved by the proper land officers of the United States; the only act remaining for the United States or its officers to perform with respect to such entries being the issuance of the patent in cases where the patent has not alreay issued."

That the titles of the defendants orginated in a mistake of law by the Secretary of the Interior, was established by Exhibits 29, 30, 31, 32, 33 and 45, (Record pp. 428½-433, 491). It appears to be argued by defendants that the relation of cause and effect between the Secretary's mistake as to the eastern terminus and his action in permitting the entries under which the defendants claim, is not sufficiently established. Discussed *infra*, pp. 84-5.

Sundry Civil Act of 1898.

With a view to falicitate the adjustment of controversies between the Northern Pacific Railroad Company and settlers along its entire line, Congress embodied in the Sundry Civil Act of July 1st, 1898, (30 U. S. Stats., 620) the provisions which we have already quoted in full. They were shown to have been accepted in writing by the Northern Pacific Railway Company, the successor of the Northern Pacific Railroad Company, July 13th, of that year. (Exhibit L., p. 758 of Record).

As indicated by its legislative history, as well as by its terms, the act is one which was framed with no particular reference to these controversies, but with impartial reference to all conflicts with settlers anywhere arising prior to January 1st, 1898.

The record presents four questions upon the construction of this act:

(1). These lands were held by the company for eighteen months after the passage of the Sundry Civil Act, and when sold, January 19th, 1900, had never been included by the Secretary of the Interior in any of his certifications of contested lands, provided for by the act. (Record, pp. 130, 131, 191, 192).

Does the second proviso which imparts conclusive force as against the Company, to the Secretary's listing and certification of lands in contest—and found by him to fall within the operation of the act, make an exception of such lands as might be sold or contracted before, by their inclusion in the Secretary's lists, they had been identified as lands to be relinquished? Or is the exception of only such land as had been sold prior to the passage of the Sundry Civil Act? Discussed *infra*, pp. 36-54.

(2). By transcript of the tract books of theLocal Land Office, introduced as Exhibit 26 (pp. 419-426), it is shown that but two of these entrymen have settled upon the lands entered by them. All the other entries were made under the so-called Timber and Stone Land Act, which contemplates a mere cash entry without settlement, (20 U. S. Stats., 89, and 27 U. S. Stats., 348) or through the location of scrip.

The question is thus presented, Has the Act application to any others than *"qualified settlers"* on the public lands? Was it designed for the relief of persons taking land by scrip location or under the Timber and Stone Land law above cited? Discussed *infra*, pp. 59-61.

(3). By Exhibit "A", attached to the bill, and admitted by the answers, and also by Exhibit 26, (Record pp. 419, 426), it was shown that prior to the passage of the Act of July 1, 1898, patents had issued to the defendants for one thousand three hundred and fifty-nine acres of these lands lying in the first, and for twenty-one hundred and sixty-four (2164) acres lying in the second, indemnity limits.

Is the act applicable to these lands over which the Department's jurisdiction had expired, by issuance of patent, prior to its passage? Discussed *infra*, pp. 55-58.

(4). By Exhibit "A" attached to the bill, and admitted by the answers, it appears that of the lands in controversy, fifty-four hundred and fifty-nine acres were entered before January 1st, 1898.

The act is expressly restricted to land which "prior to January 1st, 1898" * * * "has been purchased directly from the United States or settled upon in good faith, etc." Can the act be construed as affecting such lands? Discussed *infra*, pp. 61-62.

Jurisdictional and Kindred Questions.

(1). The defendants raise the contention, that inasmuch as there are certain questions of fact with reference to the railroad selections, which it would ordinarily be incumbent upon the Secretary of the Interior to determine, such, for example, as the existence or non-existence of deficiencies of lands in place limits and first indemnity limits, etc., the courts are precluded from investigating and determining such questions, notwithstanding, that by patents in some cases, and by final receipts, certificates and allowances in others, the Secretary, actuated by a mistaken view of the law, has awarded the lands to the wrong parties. Discussed *infra*, pp. 155-157.

(2). Of the lands in controversy, patents appear to have issued for only thirty-five hundred and twenty-three (3523) acres, leaving an acreage of seven thousand and sixteen acres with respect to which the titles of the defendants are represented only by final certificates and receipts.

As to these unpatented lands, the defendants contend that the suit is prematurely brought, not only as complainants seek an adjudication with reference to the title, but even as they seek an injunction against trespass. Discussed *infra*, pp. 64-84.

In this connection, question is also raised by defendants, as to the sufficiency of the proofs that the patents have actually issued with respect to the thirteen hundred and fifty-nine acres above mentioned. Discussed *infra*, pp. 160-162.

(3). With respect to the title of the complainants, it is contended by defendants that even though valid, it is equitable only, and that the case falls within the rule that a suit to quiet title cannot be maintained upon an equitable title. Discussed *infra*, pp. 163-167.

Table of Material Dates.

For convenience of reference, we append the following chronological arrangement of the dates material to the controversy:

May 5, 1864,	Lake Superior & Mississippi R. R. Grant.
May 26, 1864,	Withdrawal on Location of General Route of Lake Superior & Mississippi Railroad.
July 2, 1864,	Northern Pacific Railroad Grant.
July 16, 1866,	Lake Superior & Mississippi Railroad Supplemental Grant.
Nov. 2, 1866,	Lake Superior & Mississippi Withdrawal on Definite Location.
May 31, 1870,	Northern Pacific Second Indemnity Resolution.
Nov. 21, 1871,	Northern Pacific Definite Location from Thomson Junction to Fargo.
July 6, 1882,	Northern Pacific Definite Location from Thomson Junction to Ashland.
May 28, 1883,	Secretary Teller's Circular Dispensing with Specification of Losses in Northern Pacific Indemnity Selections.

Oct. 18, 1883,	Northern Pacific Selection List No. 10. (First Indemnity).
Oct. 18, 1883,	Northern Pacific Selection Lists Nos. 15 and 16. (Second Indemnity).
Oct. 10, 1887,	Specification in Bulk of Losses Underlying Northern Pacific Selection List No. 10.
July 19, 1891,	Specification Tract for Tract of Losses Underlying Selection List No. 10.
Apr. 11, 1893,	Specification Tract for Tract of Losses (originally specified in bulk), Underlying Selection Lists Nos. 15 and 16.
Aug. 11, 1896,	Secretary's Decision Holding Eastern Terminus at Duluth and Cancelling the Selections.
Nov. 15, 1896, to June 8, 1899,	Entries Under Which Defendants Claim.
Apr. 16, 1900,	Decision in Doherty Case, 177 U. S., 421.
July 13, 1898,	Acceptance by Northern Pacific Railway Co. of Sundry Civil Act of July 1, 1898.
Feb. 1899,	Issuance of Regulations Under Act of July 1, 1898.
Sept. 22, 1899,	Succession of Northern Pacific Railway Co. to Northern Pacific Railroad Company's Title to Lands in Controversy.
Jan. 19, 1900,	Deed from Northern Pacific Railway Company to Complainants.

ASSIGNMENTS OF ERROR.

The trial court erred in the following particulars:

(1). In adjudging that by force of the Sundry Civil Appropriation Act of Congress of July 1, 1898, the Northern Pacific Railway Company became obligated to relinquish to the United States the lands described in the bill of complaint or any of them, although all such lands had been sold by said company to complainants prior to the inclusion of any of them in any of the lists of lands purchased, settled upon or occupied, which by the terms of said act, the Secretary of the Interior was required to prepare and deliver to the railway company.

(2). In construing the said act of July 1, 1898, as obligating the railway company to relinquish any lands of the United States.

(3). In adjudging that any of the defendants had purchased, settled upon, claimed or occupied any of the lands described in the bill of complaint prior to January 1st, 1898, excepting only those defendants whose entries are specified as anterior to that date in the second column of Exhibit "A" attached to and made a part of the bill of complaint.

(4). In adjudging that those lands claimed by defendants upon which, as specified in the fourth column of Exhibit "A" attached to, and made a part of, the bill of complaint, and admitted by the answers, patents had issued prior to the passage of the Sundry

Civil Appropriation Act of July 1, 1898, were within the purview of that act.

(5). In adjudging that the controversies between the complainants and the several defendants with respect to the lands in the bill of complaint described, or any of them, are *in fieri* in the Interior Department of the United States so as to be an improper subject matter for judicial consideration; and in adjudging it a prerequisite to a judicial determination of the equities of the complainants in any particular parcel of said lands, that a patent should have issued therefor.

(6). In adjudging the issuance of patent a prerequisite to relief by the complaints notwithstanding the great multiplicity of actions which must thence ensue.

(7). In adjudging that until the issue of patent upon any particular parcel of land in the bill of complaint described, the complainants, although having a vested right and equitable interest therein, are not entitled to have their equities in such land judicially established.

(8). In adjudging the threatened continued cutting of timber by the defendants Michael Kelley and Cloquet Lumber Company from the lands described as the Southeast Quarter of the Northeast Quarter, the Northeast Quarter of the Southeast Quarter, Lot Five (5), and the Southeast Quarter of the Southwest Quarter of Section Nineteen (19), in Township Fifty-four (54), Range Twelve (12); and by the Franklin Lumber Company from the Southeast Quarter of the Northwest Quarter and the Northeast Quarter of the

Southwest Quarter of Section One (1), in Township Fifty-four (54), Range Thirteen (13), to be of too unsubstantial a character to justify an injunction.

(9). In adjudging the complainants not entitled to an accounting for the value of timber cut by the defendants Kelley and Cloquet Lumber Company from the lands above mentioned, because no patent had issued for said lands.

(10). In not adjudging the several entries and patents of the defendants to be null and void as having been made after the lands had ceased to be a part of the public domain.

(11). In not adjudging that the complainants had succeeded to an equitable interest and vested right in the several parcels of land in the bill of complaint described duly earned and acquired by the railroad company through the construction of its road, and through valid selections of indemnity lands duly and regularly made.

(12). In not adjudging that by reason of such prior and vested right and equitable interest complainants are entitled to such legal estates, if any, as may have passed to the defendants by force of the patents referred to in the fourth column of Exhibit "A" attached to the bill of complaint.

(13). In adjudging that the court had no jurisdiction of the matters set forth in the bill of complaint as to those lands upon which no patents had been issued.

(14). In dismissing the bill of complaint.

(15). In holding the Act of 1898 applicable to the adverse claims of others than actual settlers.

FIRST POINT.

These Lands having been sold before they were identified by the Secretary's Lists as lands to be relinquished, are expressly excepted from the obligation to relinquish created by the second proviso of the Sundry Civil Act of 1898.

Such is the *natural* and literal or grammatical construction of the second proviso; it is the *necessary* construction if the clause excepting sold or contracted lands is to have any effect or operation whatever; it is the construction suggested by the history of the act, and by its legislative precedents and analogies; and as involving least of inconvenience or injustice, it is the reasonable construction.

This is the Natural and Literal Construction.

The Act of 1898 has already been quoted in full in our statement of the case. By its first proviso, the Secretary of the Interior is required to deliver to the

Railroad Company from time to time, lists of the several tracts claimed adversely to the Company under settlements or purchases made *in good faith, prior to January 1st,* 1898, by persons who, when notified as required by the last proviso, elect not to take lieu lands, but to insist upon their entries.

These lists of the Secretary are in the nature of findings by him, that each of the included tracts is claimed adversely to the Railroad Company, under a settlement or purchase (1) made prior to January 1st, 1898, (2) made in good faith, (3) made by one who, under the provisions of the last proviso, elects not to take lieu lands, but to insist upon his entry. What would be the result of these inquiries by the Secretary in any particular case, it is clear that the Railroad Company could not possibly anticipate. The second proviso which follows immediately upon the clauses regulating the preparation of these lists, and their service of the company, is wholly devoted to a definition of the legal force and operation of these Secretary's lists, and is in the following words:

> *"Provided further, that the railroad grantee or its successor in interest, shall accept the said list or lists so to be made by the Secretary of the Interior, as conclusive with respect to the particular lands to be relinquished by it, but it shall not be bound to relinquish lands sold or contracted by it, or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron or coal."*

Interpreted in general terms, the case presented by this proviso, is that of a statute which makes the legality or force of a transaction, (in this instance the service of the Secretary's lists) dependent in part upon the existence of a particular condition, (in this instance upon whether lands are sold or unsold), without expressly declaring whether it is at the time of the transaction, or at the date of the statute, or at some other time, that the prescribed condition must exist.

Is there any general rule as to the legislative meaning in such a case? We say that it is among the commonest of statutory situations; that it is not a case in which it is necessary to grope for a meaning which by inadvertence Congress has failed to express, but is a typical instance of normal ellipsis, i. e., the omission of a word which is so palpably *suggested,* that "it can be spared from utterance without defect in the sense;" that in all such instances the implied and omitted word is "then," i. e., at the time of the transaction; that sentences presenting ellipses of this character are so thoroughly habitual as to be idiomatic; that the effect of such a clause upon the mind is infallibly the same as though the word "then" had been used, the fact of its absence indeed, no doubt escaping consciousness in many cases; that it is an elliptical form of expression so stereotyped in every day life and in the framing of statutes, that it is as reliable an index of the legislative mind, as our commonest words or standard idioms; that if, while busy in the first and second provisos with things of the future, with the times when the Secretary should prepare his lists, the lands he should include in them, the service he should make of them on the Railroad Company, the conclusive force they should have upon the Company, except as to the lands sold, etc., the legislative mind had taken its flight back to conditions existing at the passage of the act, some trace of the transition would have been left upon the face of the statute; that such transitions of thought are, by the laws of the mind, self registering, and that the fact of this alleged transition being unregistered in the language of the act, is proof positive that it never occurred. In enunciating the conditions by which a given transaction may be affected, it is not customary even in legislation, to specify, by the use of the word "then" or otherwise, that it is by such conditions as exist at the time of the transaction, that its operation is to be affected. That is something that goes without saying. If in some rare instance, it is intended that a given condition or status shall modify a transaction with which it is not coincident in point of time, or that it shall not modify a transaction with which it is coincident, unless it shall also have endured for a certain period, then, and not until then, is specification of time necessary to complete the meaning. It may fairly be said of our statute books that they are built throughout upon this principle. Thus Sec. 2276 Rev. Stats. authorizing the selection of lieu school lands from *unappropriated surveyed public lands*, means lands which are unappropriated, surveyed and public, at the date of the proposed selection; a proposition which however absurdly simple it may appear, is, when intelligently applied to the breadth of its principle, decisive of the point in hand. For all that can be said in support of it is, that where the effect of a transaction, (in that case the selection of lieu school land), is made to depend upon the status of a particular person or thing, the reference, too palpably to admit of argument, is to the status at the time of the transaction. And this is all that it is necessary to say in order to establish our construction of the proviso which defines the force of the Secretary's lists upon sold lands. So deeply seated is this view in our modes of thought and speech, that it seems intuitive and axiomatic, and will be found to assert itself through all the varieties of expression which in such connections are to be found in our statutes.

So in Sec. 5469, Rev. Stats., relative to the stealing of letters from a *"Postoffice;"* the status of the place being here determined by a noun instead of an adjective as in the preceding case. The place must be a postoffice at the time of the theft.

So, though it is by the use of a participle whether past or present that the status is defined, as in 25 Stats. 166, against cutting timber "from lands *belonging* to any tribe of Indians;" or as in Rev. Stats. Sec. 2394, authorizing the entry of land "by inhabitants of any town *located* on public lands;" or as in the exemption from entry, of "lands actually *settled upon* or *occupied* for purposes of trade."

So, where the condition is defined, by the use of a verb of the present tense, as in the clause of the Desert Land Act excluding from its benefits, any one "who *is* not a resident citizen of the State;" or as in the prohibition against the pre-emption of lands "on which *are* situate any known salines or mines;" or as in the prohibition of Sec. 3452, Rev. Stat. against the possession under certain circumstances of "any goods on which taxes *are* imposed by law;" or as in Sec. 5391. Rev. Stats. relative to the commission in any place within the jurisdiction of the United States of "an offence which *is not* prohibited by any law of the United States;" or as in Sec. 3266, Rev. Stats. prohibiting the use of a still upon premises where fermented liquors *are* manufactured; or as in Sec. 2234, Rev. Stats. disqualifying a district land officer to hear any contests "in which he *is* interested, or *has been* of counsel."

So, where the verb used is in any of the past tenses, as in Sec. 3404, Rev. Stat., providing for the punishment "of every person who purchases or receives for sale any cigars which *have not been* branded or stamped according to law;" or as in Sec. 3404, relative to persons who purchase cigars from any manufacturer "who *has not* paid the special tax."

So, under the more noticeable phraseology of Sec. 2265, Rev. Stat. requiring "every claimant under the pre-emption law for land *not yet* proclaimed for sale," to make known his claim in writing, etc.

These random illustrations from the statute book, the staple character of which is abundantly attested by the strangely familiar jingle of their various forms of expression, show that under all statutes, which contemplate that some transaction is to be affected in its operation by the existence of a particular status or quality in some person or thing without specifying when the status or quality must exist, whether the status or quality is defined by the use of an adjective, a noun, a participle or any tense of a verb, the meaning is that the prescribed status or quality is to be a modifier of the transaction if in existence at the time of its occurrence.

The constancy with which those conditions that are concurrent with a transaction, are found to be those that are logically so related to it as to modify its effects, the thoroughly standard character of the resulting ellipses of the adverb "then," and the degradations of prolixity into which our language would fall but for the practice of these and similar linguistic economies, are all well exhibited in the contrasts between the diction of an ordinary penal statue and that of an indictment framed upon it. Because an indictment with its exaggerated standards of verbal completeness, is less tolerant of implications than a statute, it becomes necessary in framing it, to translate into words, many meanings that in the statute are either deliberately or unconsciously left to implication. Hence it is, that although the adverbs "then" and "there" rarely appear in a penal statue, they so noxiously overrun our indictments, as almost to choke out the sense. And in nearly every instance, where advisedly used, they represent a meaning which resides as truly in the statute's ellipitical forms of expression, as in the verbiage of the indictment. Thus in United States vs. Simmons, 96 U. S., 360, a case arising on one of the statutes above cited, an indictment for using a still "on premises where fermented liquors were manufactured," was held defective for not alleging that fermented liquors were "then" as well as "there" manufactured, since although the language of the statute was, "premises on which fermented liquors *are* manufactured", its meaning was, "are *then* manufactured,"—i. e., at the time of the use of the still. (It is not recorded that any one had the hardihood to claim in that case, that a statute "speaks from its passage" in such a sense that the use of the present tense *are* manufactured" imported a reference to manufacture at the time of the passage of the statute.)

It may be argued that decisions such as this, are due not to any such general rule as we have suggested, but to peculiarities of the condition in the particular case;—in that case to the fact that reasons could be surmised for prohibiting the use of the still *when* fermented liquors were being manufactured on the same premises, but not for prohibiting such use because malt liquors were manufactured on the premises at the date of the statute. But that the root of the decision lies deeper, is manifested by supposing that the statute had named some restriction which would have been as irrational when referred to the date of distilling, as when referred to the date of the statute. Suppose for instance, that the statute had prohibited the use of a still on premises where buttons are manufactured. The mind appreciates as intuitively as before, that here, as in the other case, the reference is to the status of the premises, not at the date of the statute, but when the still is used, however senseless the restriction may be.

The fact undoubtedly is, that these various forms of elliptical reference to the conditions by which a transaction shall be modified, are so familiar, and so free from ambiguity, that in the case at bar no question would have been raised in regard to the meaning of Congress, if the statute, instead of excluding sold lands from the company's obligation to relinquish, had been so framed as to exclude from such obligation, "vacant lands," or lands sold by the original settler, or lands known to be valuable for coal, etc. It would then doubtless have been confessed that the reference was to the status of the lands when the Secretary called for the relinquishments. The construction given by the defendants to the Act of Congress, is inspired exclusively by the circumstance that a sale of lands by the Company is its voluntary act, which as they improvidently assume, it would for that reason be unreasonable to allow after the passage of the act.

We ask the court to observe, however, that this statement of the situation, if correct, completely vindicates the claim which we are now urging, that the *sound* of the statute,—its natural and grammatical construction, are with us;—that the clause is built upon the pattern habitually employed where the reference is to conditions which shall modify a transaction if coincident with it in point of time.

We ask the court also to observe, that the language used must be presumed to have carried to the legislative minds, the meaning which it is naturally adapted and usually employed to convey; and the circumstance that Congress did not alter that meaning, as it might easily have done by inserting the word "heretofore" before the words "land sold" in the second proviso, is proof that the natural meaning is that which Congress intended to adopt and convey. Whether there are sufficiently cogent considerations of reason or justice to authorize a departure from the natural meaning of the language used, is a distinct question which we shall presently discuss.

It would seem from the opinion of the learned Judge of the trial court, that he was largely influenced in his construction of this act by the assumption that there is some general principle upon which a statute presumably "speaks from its passage," in such a sense as to militate against our view. The suggestion is abundantly refuted by the foregoing illustrative statutory citations.

Although a statute speaks from its passage, in the sense that it is operative from that time, it speaks of, and gives effect to, concrete conditions, which in ninety-nine cases out of a hundred, come into existence after its passage. It speaks with its face turned forward, not backward. It was the word "heretofore" that the trial court read into the statute before the word "sold;" a word whereby the clause excepting sold lands was made exclusively retrospective instead of exclusively prospective, as presumtively a statute should be; a word not fit for implication in a statute under any circumstances; of all words in the language the hardest to imply in a statute, as the word "then" is perhaps the easiest.

It is the Necessary Construction.

Unless the clause is thus construed, it is inoperative, the meaning of the statute being the same with it as without it. Although no express reference had been made to sold lands, it would have been impossible to construe the act as contemplating a resumption by the government of the title to lands which prior to the statute had been disposed of by the Company.

(1). For Congress could not if it would, empower the Company to give back to the government vested interests, which at the date of the statute it had already sold or contracted. For Congress to undertake the divestment of interests so vested and transferred, would have been unconstitutional; for the Company to have undertaken it, would have been unlawful and equally futile; for the accomplishment of such an end, Congress and the Company acting in concert, are as powerless as either acting alone.

No proceeding by the government for the cancellation of rights vested in the Railroad Company by its selections, and sold or contracted to third parties, would have been binding upon purchasers having no notice of the proceeding.

Guaranty Savings Bank vs. Bladow, 176 U. S., 448, 454.

A fortiori, the Railroad Company, even in collusion with the government, could not accomplish the same end by its voluntary relinquishment.

(2). It would also even in the absence of express reference to sold lands, have been incredible that Congress could have intended to be perfidious to actual prior purchasers from the Company, in order that it might be charitable to pretended purchasers from the government.

(3). At the date of the Sundry Civil Act, the mortgage upon the property and franchises of the Northern Pacific Railroad Company was in process of foreclosure (p. 449 of Record). A purchaser under the foreclosure of all such properties and franchises would stand toward the government and toward competing entrymen of public lands in substantially the same relation as the original company. Five or six times, the Act makes reference to the "lawful successor" or "successor in interest" of the Railroad Company, all of which references are manifestly to the Railroad Company's general successor in interest under the pending foreclosure, although in the fourth proviso, Congress expressly disclaims an intention in any manner to legalize the foreclosure. The fact that Congress thus had in mind the matter of succession in interest, and made these several references to the rights and obligations of the Northern Pacific Railway Company, if found to be the general successor in interest of the Northern Pacific Railroad Company, is circumstantial evidence that there was no intention to attempt the binding of lands in the hands of any other kind of successor. *Expressio unius est exclusio alterius.*

History of the Act and its Legislative Precedents.

The Northern Pacific clause of the act of 1898 was originally introduced by Senator Wilson, of Washington, as an amendment to the general act of June 22, 1874. (18 Stat., 194). Its subsequent transfer to the Sundry Civil Act was undoubtedly an expedient to avoid its defeat from lack of time. The general act of 1874 with which this Northern Pacific legislation is as strictly *in pari materia* as though the plan of making the one an amendment of the other had been adhered to, is merely an offer to land grant railroad companies, of the right to select lieu lands for such tracts as they might relinquish to adversely claiming settlers whose entries or filings had been allowed under the pre-emption or homestead laws. Afterwards by act of August 29, 1890, (26 Stats., 369) settlers were accorded the benefits of the act of 1874 even though for any reason their claims had not been filed or allowed. Related to this general legislation and also to the special act now under construction, is also the special act of October 1, 1890, (26 Stats., 674) whereby settlers on Northern Pacific second indemnity lands between August 15, 1887, and January 1, 1889, were given a right to transfer their entries to other surveyed public lands, with a credit for the time spent and improvements made on their original claims.

It will be observed that none of these acts, in which the general policy of the Government in this connection, is reflected, affords any trace of a disposition on the part of Congress, to relieve the embarrassments of those who for any reason had mistaken railroad for Government lands, by drastically entailing a confusion still more confounded upon the titles of the railroad companies and their myriads of past, present and future grantees.

Ours is also the Reasonable Construction.

It thus appears that as a pacificatory measure the act of 1898 as construed by us goes, in relief of entrymen, far and away beyond what has generally been conceived by Congress as reasonable in such cases.

(a). It gives to entrymen the benefit of the principle of the special act of October 1, 1890; i. e., the privilege of choosing whether he will stand upon his rights or take other lands with credit for time and labor spent.

(b). It also gives him the benefit of the principle of the general act of June 22, 1874, by offering to the railroad company the privilege of selecting other lands in lieu of those in contest, as an inducement to its voluntary abandonment of the contested lands.

Had the act stopped there it would have been eminently conducive to peace between the company and its competitors.

(c). The act goes further, and although not in express words, yet probably by the implications of the second proviso, obligates the company to relinquish any tract which shall be reported to the Secretary as adversely settled upon in good faith and which the settler elects to retain, unless, when the relinquishment is called for, it shall already have been sold. This is as far as Congress could go in reason; is as far as it could expect the company to go with it, and is so far as the statute was intended, or should be construed, to extend.

If this act as construed by us is unreasonable in its treatment of the unfounded claims of the adversely claiming entrymen, what words can fitly describe the monstrous injustice of those, its legislative antecedents. For our construction of this act, instead of nullifying it as was suggested by the trial court, accords to it as shown by the foregoing simple tabulation, a scope which may well be described as more than three times as great as could be claimed for either of its antecedents, the general act or the special act above mentioned. It is the normal function of a proviso to modify, perhaps radically, the operation of the statute upon which it is engrafted. Incredible as it may seem, the view which the trial court took of this statute, rests upon the assumption that it is the office of a proviso to reiterate something already expressed or implied; that it cannot be so construed as to modify the statute, since that would be to nullify it pro tanto.

That the construction placed upon this act by the trial court is unjust and unreasonable is apparent from the results which must logically follow from this decision. If this decision declares the law correctly, it is impossible for the railway company to convey a marketable title to an acre of land within its grant until the whole grant has been adjusted under the act of 1898.

The grant of lands to the Northern Pacific in the primary limits was a grant *in praesenti* under which the company took the full legal and beneficial title to the odd numbered sections within these limits as soon as the limits were ascertained by the definite location of the road. This present grant was, to be sure, subject to the exception of lands previously granted, lands reserved and lands subject to pre-emption and other claims and rights existing at the date of definite location (Act of Congress July 2, 1864, 13 Stat. at Large p. 365). It is the settled construction of the act that the claims contemplated by section three, the effect of which was to except land from the grant, are claims existing *of record* in the land office, and, mere settlement or occupation of a tract of land when the grant attaches on definite location will not except the land so occupied. *Northern Pacific R. R. Co. vs Colburn*, 164 U. S., 383.

The purpose of the act being that the grant of lands should aid in construction, no other rule would have been consistent, for if the title to a tract of land could not be determined by the records, but depended upon parol evidence as to the existence or non-existence of a mere settlement claim at a give date, the railway company, while in theory the beneficial owner, would in fact have no such interest as would enable it to convey and assure to its purchasers a perfect title.

The effect which the decision of the court below gives to the act of 1898 destroys this policy and casts a cloud on the title to every acre of land in the Northern Pacific grant. There are still millions of acres of unpatented lands in the primary limits of the grant and if appellants are wrong in their construction of the act of 1898 any conveyance which the railway company may make must be taken by the purchaser at his peril, and if it appears that on January 1st, 1898, the land was occupied by a settler the title derived from the railway company is liable to be defeated; and this may occur even though the settler may have removed from the premises at the date of the sale of the railway company, certainly if he have an intention of returning.

Furthermore, the court below holds that the provisions of the act of 1898 apply to patented lands as well as to lands unpatented, although the construction placed on the act by the Interior Department confines it to unpatented lands. It is true that the lands considered by the court were lands patented to entrymen and not lands patented to the railway company, but the reasoning by which the conclusion is reached that lands patented to entrymen are within the scope of the act applies as well to lands patented to the railway company. If the act does apply to lands patented under the grant and applies to all such lands which were unsold when the act was passed, the result is confusion and an impairment of the title to vast quantities of lands, both in the primary and indemnity limits, for which patents have been issued to the railway company. In multitudes of cases patents have been issued after contests in the land department, and in many cases the contestants were urging their claims January 1st, 1898, but have since abandoned them.

To affirm the decision announced below would be to reopen all these contests and to cast the same cloud upon the title to these patented lands of the railway company as has been shown to have been cast upon the unpatented lands in the primary limits. If after the passage of the act of 1898 the railway company should sell any tract of land, patented or unpatented, it would be a complete defense in an action for its possession for the occupont to show that on January 1st, 1898, he was a qualified settler and had settled upon the tract in good faith under color of title or claim of right.

It must be born in mind that there is no possible contingency in which, under this act of 1898, the railroad company can acquire a desirable tract to which an adverse claimant has the better right, or can cut off his right to surrender a poor tract with a view to taking a better one elsewhere. The only question is, what kind, or how much, of the railroad company's land, is to be taken away from it, and given to its competitors. The act is a gift horse to the entryman, and is not to be looked too closely in the mouth. No entryman who had a valid claim upon the land covered by his entry, has occasion to rely upon the act of 1898. That act is of vital interest only to those entrymen whose entries were illegal and worthless, and who are therefore seeking to take from the railroad company, by virtue of the act of 1898 and the company's consent thereto, lands to which it had already acquired a vested right, and for which it had already paid to the government what in the judgment of Congress and of the country, was a full consideration. *To strain the letter of the law* under such circumstances in order to legitimatise the claims of unlawful entrymen, and to bestow on them a gratuity, at the expense of the well earned, valid, and vested rights of the railroad company or its grantees, would amount to an abuse of judicial power.

The question confronting this court is not what this act would mean with this exception of sold lands eliminated or ignored, but what it means with this exception engraven upon its face and accorded an ordinary and grammatical construction. If we were contending for a construction of the act which would enable the railroad company to sell, in the interval in question. lands equitably belonging to the *adverse claimants*, no doubt that circumstance would bear heavily in favor of a departure from our construction, however natural and grammatical it may be. But all we are asking for the railroad company, is the poor privilege of continuing to dispose of its own, until it has been formally notified by the Interior Department that somebody else claims particular parcels, justly or unjustly, under such circumstances as in the judgment of the Secretary to bring them within the purview of the act.

In order to accredit Congress with an intention to relieve, within the bounds of reason, the parties to such unfortunate controversies as these, it is not necessary to suppose that it contemplated the vast aggregate of inconveniences not only to the company, but to purchasers of its lands, which would flow from arresting the traffic in its entire grant for the indefinite number of years which would be required for the reports by the secretary upon the voluminous facts of actual settlements, good faith of entrymen, election of entrymen, etc., in the thousands of entries falling within the operation of the act along two thousand miles of road. The acceptance by the railroad company of an act known to contemplate such a result would have occurred to no one as being within the range of possibility: and the act must be deemed to have been framed with the knowledge, that in the curtailment of the company's rights Congress could go no further than the company would go with it.

Upon the whole therefore, there is no warrant for departing from the natural and literal meaning of the second proviso, which is, that the company may continue its sales of land, except as by the Secretary's lists, particular parcels are identified for relinquishment. Any seeming, however obtrusive, persistent or plausible, that there is injustice or incongruity in permitting the Railroad Company thus to modify the operation of the statute upon particular tracts by voluntarily altering their status after the passage of the statute, is a fallacy wholly due to forgetfulness of the fact that the act of 1898 is in the nature of a largess to entrymen, which, without either incongruity or injustice, Congress might have entirely omitted, or have given only a third or a half of the scope which our construction accords to it.

There were two reasons for inserting in the second proviso, the exception of sold lands.

(1). The injustice of tieing up the contested parcels for years in the hands of the company, upon an uncertainty as to whether the contestant entrymen would elect to keep their claims or take lieu lands.

(2). The oppressiveness of casting upon almost the entire domain of the company, (contested lands and uncontested, alike), a cloud of indefinite duration, to the inestimable detriment not only of the company, but of the general public interested in purchasing and developing its lands.

SECOND POINT.

The Act of 1898 is Inapplicable to Land Patented before its Passage.

The phraseology of the act bristles with implications to this effect.

(a). Throughout the act, the release of the land by the entryman or the railroad company as the case may be, is referred to as a "relinquishment." The term is unknown to either the law of conveyancing or the law of estates, and is glaringly inappropriate to the conveyance of a fee. It is a word sounding not in property or estate but in matters of contract and bare right. It is the synonym of "abandonment," and is as strikingly inappropriate as "abandonment" would be, to describe the conveyance of a patent title. While appropriate to the release of bare rights, whether contractual or otherwise, its greatest vogue with us, has been in connection with the abandonment of incipient claims upon public lands, of which use and meaning it smacks as strongly as a word can.

(b). The only word used interchangeably with "relinquishment" in any part of the act, is the word "surrendering," just before the first proviso. This is another word utterly inappropriate to a conveyance of a patented title back to the Government; while no less apt than "relinquishment," when applied to the abandonment of an incipient claim upon land. A surrender is "the falling of a less estate into a greater." It is "the yielding up or delivery of lands, tenements and the estate that a man hath therein, unto another that hath a higher and greater estate in the same lands or tenements." It is among the requisites of a surrender "that the surrenderee have a higher and greater estate in the thing surrendered than the surrenderor hath, so that the estate of the surrenderor may be drowned therein."

Touchstone 300, 303.

(c). In the first clause of the act and in the last proviso, the railroad right with which the act is proposing to deal, is described as one that "has attached by definite location or selection," without any allusion to rights that had been transmuted by patent into an estate in fee.

(d). This is also the tacit assumption of the last clause of the first proviso, for the provision there is, that upon relinquishment by the railroad company, the entrymen "shall be permitted to prove their titles;" the reference evidently being to the final proofs preliminary to patent.

(e). So in the last proviso, it is assumed that in all cases of the selection of lieu lands by entrymen, they shall "make proof therefor as in other cases provided; and in making such proof, credit shall be given for the period of their *bona fide* residence," etc.

(f). By the last proviso, entrymen are authorized to "transfer their claims to an equal quantity of public lands," etc. The language is inappropriate to the conveyance of one patent title to the Government in exchange for another.

It was therefore well decided by the department promptly after the passage of this act, that it had no reference to patented lands. 28 L. D. 103, 470; 29 L. D. 244; 7th paragraph of Department Circular, p. 742 of record.

The same was also true, as should be noticed, of the above cited acts of 1874 and 1890.

In overruling the Department upon this subject, the trial court appears to have been largely influenced by an assumption that the functions of the Secretary of the Interior under the act of 1898 are purely ministerial. Before certifying any particular tract to the railroad company for relinquishment, the Secretary is required to determine whether the settlement or purchase of the entryman was, in fact, made prior to January 1st, 1898, whether it was made in good faith, whether the entryman was a qualified person, etc., all of which findings are made conclusive upon the railroad company. What functions are judicial if these are ministerial?

Again, the argument of the lower court upon the power of Congress to clothe the Department with jurisdiction over patented lands for the peculiar purposes of such an act as that of 1898, and upon the capacity of the Department to exercise such jurisdiction if conferred, is as conclusive ,as it is clearly beside the point. Our point is, not that Congress was incapable of including patented lands in the act of

1898, but that there is no adequate evidence of its intention to do so. The only titles over which the Interior Department has generally, or normally, jurisdiction, are those of which the fee is in the United States. Its jurisdiction is wholly incident to the determination by the Government, of the disposition properly to be made of its legal title to public lands. When that title is transferred by patent, the jurisdiction of the Department is extinct.

Moore vs. Robbins, 96 U. S., 530, 533.
U. S. vs. Schurz, 102 U. S., 378, 402.

Every act conferring jurisdiction upon that department should obviously be construed in the light of this characteristic limitation upon the customary range of its functions. It is not simply that as implied in Moore vs. Robbins, 96 U. S. at p. 534, there are constitutional limitations which would be transgressed by the attempted transfer to the Department of functions essentially appertaining to the judiciary. Even where no constitutional objection would arise, and where Congress confessedly could, if it would, invest the Department with particular powers over patented titles, reasonable presumptions should still be indulged, that unless the contrary is expressed, Congress has intended to charge the Department only with such powers and duties as fall within the ordinary sphere of its activity, i. e., such as relate to disposition of lands still legally owned by the United States.

As shown by Exhibit "A" attached to the bill and admitted by the answer, and also Exhibit 26 (Record pp. 419-426) patents had issued prior to the passage of the act of 1898, for three thousand five hundred and twenty-three (3523) acres of these lands.

THIRD POINT.

The Act of 1898 is for the Relief of Actual Settlers only.

Such confessedly was the limited scope of the prior acts of 1874 and 1890 already referred to.

The first clause of the act of 1898, standing alone, might be regarded as slightly ambiguous on account of the difficulty in determining whether the words "by any qualified settler," relate to and qualify the entire preceeding clause "has been purchased directly from the United States or settled upon or claimed in good faith," or whether they relate to and qualify only the latter part of said clause. The former alternative however is by far the more reasonable, even when the clause is considered apart from the context. The word "purchase" is used with reference to a purchase by a qualified settler, and the distinction between lands purchased, and lands settled upon or claimed, was designed simply to make it clear that the act was intended to be equally applicable whether the settlers' rights had been consumated by purchase, or had been only initiated by settlement or claim, and whether acquired by commutation purchase or by occupancy and cultivation for the full statutory period.

If any doubt might have arisen as to the construction of this clause, it seems to be put at rest by the last proviso of the act, which logically should have been the first clause of the act, and which is the clause of the act bearing most directly upon the rights of those claiming adversely to the railroad company. This clause, as the court will observe, extends the privileges of the act only to qualified settlers, their heirs and assigns, who, prior to January 1, 1898, purchased or settled upon or claimed in good faith, etc. This clause is as free from ambiguity as language can be, and is the absolute solvent of any possible ambiguity in the first clause. Upon this ground the Act of 1898, even if construed as excepting only lands sold prior to its passage, must be regarded as applicable to only a minority of the tracts in controversy. (See Exhibit 26, pp. 419 to 426 of Record.)

In the brief of counsel for the defendants, and perhaps in the opinion of the court below, there are some suggestions that this act of 1898 was passed largely with reference to the controversies arising from the eastern terminal. Such is demonstrably not the fact. It is in terms applicable to the entire line of the Northern Pacific Railroad, along the entire length of which it is a matter of common knowledge and current history that immense numbers of controversies had arisen between the company claiming under its grant and adverse settlers. The decision of the Supreme Court of Wisconsin, which was the first in which the matter of the eastern terminus was adjudicated, was not made until June 23, 1898, while this provision of the sundry civil bill was introduced as an amendment to that bill by Senator Wilson of the State of Washington in March, 1898. * * * During the same month the Secretary of the Interior communicated with the Senate relative to the proposed amendment. (See letter of the Secretary of the Interior to Chairman of the Senate Committee on Public Lands dated March 12, 1898).

At the time when the decision in the Daugherty case was rendered June 23, 1898, the consideration by Congress of this portion of the sundry civil bill had been already concluded. The decision of the Supreme Court of Minnesota in McHenry vs. Nygaard, 72 Minn., 2, decided April 22, 1898, and involving questions applicable to large areas of land in northwestern Minnesota were, with similar large areas of contested land in the States of Washington, the main springs of this legislation.

FOURTH POINT.

In any Event, no Timber and Stone Lands are within the Act of 1898, Unless Paid for Prior to January 1st of that Year.

By reference to Exhibit "A" attached to the Bill and admitted by the Answer, (p. 17 of Record), and to Complainants, Exhibit 26, (pp. 419-426), it appears that purchases of five thousand four hundred and fifty-nine (5459) acres of these lands, under the Timber and Stone Land Act, were consummated by the payment of the purchase moneys after January 1st, 1898.

It is clear that such lands had not in the language of the act, "prior to January 1st, 1898, been purchased directly from the United States, or settled upon in good faith."

As above noticed the Timber and Stone Land Act, (20 Stats. 89, 27 Stats. 348) contemplates a cash entry without settlement.

FIFTH POINT.

The fact that for a portion of these lands the Patents have not issued, does not withdraw such lands from the jurisdiction of the Court, under the peculiar circumstances of this Case.

It is conceded in the opinion of the Circuit Court that as to about 4500 acres of the land described in the bill, the defense urged by reason of the provisions of the act of July 1st, 1898, cannot be sustained, for the reason that the rights of the defendants in these lands were initiated later than January 1st, 1898, and by its terms the act does not apply to such lands. (p. 1035). The court, however, holds that no relief can be granted as to these lands, for the reason that it appears that no patents for them have been issued to the defendants, and therefore the legal title is still in the United States. The court concludes upon the authority of *Marquez vs. Frisbie*, 101 U. S., 473, that because the legal title is still in the United States, the court has no jurisdiction of the subject matter and cannot adjust the equities between the contending parties; and upon this ground the bill is dismissed as to these lands. As will be shown, the decision of the Supreme Court in Marquez vs. Frisbie does not justify this ruling.

(A.)—Because none of these Controversies are "in fieri" in the Department.

Some of these lands were entered under the homestead law, and the entries have been followed by proof of occupation and payment of the purchase price required by law, and final certificates have been issued which entitle the holders without any further act or deed, to receive a patent from the United States. Others of the lands have been entered by the defendants under the Timber and Stone Act, and the purchase price required by law has been paid by them, and certificates of purchase have been issued, entitling them to receive patents fram the United States.

It is apparent, therefore, that as between these persons and the United States, the full equitable title has passed and the United States no longer has any beneficial interest in the lands. Cornelius vs. Kessell, 128 U. S., 456. The lands are subject to taxation. Witherspoon vs. Duncan, 4 Wallace, 210, County of Polk vs. Hunter,42 Minn., 312. Actions may be maintained in the state court to recover possession. Berthold vs. McDonald, 22 Howard, 334.

The contests in the land department between the claimants under the public land laws and the railroad grantee, have been concluded, and no functions remain to be performed by the officers of the United States except the ministerial duty of issuing the patent. The question is presented, therefore, whether the Circuit Court had jurisdiction of the subject matter, and whether it was competent for it, where it appeared that the lands had been awarded to the defendants under a manifest error of law, and they had received the evidence of a full beneficial and enforcible title, to award the relief prayed by the complainants and correct the error of law committed by the officers of the United States and cancel the evidence of the title issued by them.

The case of Marquez vs. Frisbie, *supra*, was brought on a complaint alleging that the plaintiff was entitled to enter as a pre-emptor a certain quarter section of land, and it was alleged that the Interior Department had, under an erroneous view of the law, rejected his application. There is nothing in the statement of the case nor the opinion, from which it appears that either the plaintiff or the defendant had so fully complied with the laws relating to the disposition of the public domain that the United States was divested of its equitable title, and it affirmatively appears that the question of the rights of the parties to receive the land in controversy was still pending before the land department. The court say of the facts stated in the complaint:

> It plainly appears from this: First, that the defendant had not the legal title; second, that it was in the United States; and third, that the matter was still *in fieri* and under the control of the land officers.
>
> Nothing in the record of the case before us gives evidence *that any further steps in that department have been taken in the case.*

It has long been settled that the land department is the special tribunal to which is committed in the first instance the determination of questions of fact and questions of law upon which depend the rights of contesting claimants to the public land, and the rule declared by the Superme Court in Marquez vs. Frisbie is merely a recognition of the principle that until the judgment of that tribunal has been rendered, and until a property interest in the land in controversy has become vested in one or the other of the conflicting claimants, the court will not interfere and by their decree render of no effect the judgment to be rendered by this special tribunal.

But in the case at bar the lands in question have been sold by the United States, the purchase price paid by the defendants and the final judgment of the officers of this special tribunal has been rendered to the effect that the defendants are the rightful owners of the lands and entitled to their possession and enjoyment. The property interest in these lands has passed out of the United States and has become a matter of private right, and unless the court can review the erroneous judgment of the land department the lands will be despoiled of their principal value and when the patents issue there will be conveyed merely the naked legal title to barren tracts of land which have been denuded of timber, and the rightful owners of these lands will be remediless. It is submitted that the decision of the Supreme Court in *Moore vs. Robins*, 96 U. S., 530, is conclusive that under the facts shown in this record the court had jurisdiction of the subject matter and that it was its duty to enter a decree quieting the title of the complainants to the land in question. In that case it was held that where the secretary of the interior had committed an error of law, and had awarded a tract of land to one person to which another was rightfully entitled, and a receiver's final receipt was issued, the courts would assume jurisdiction before patent to adjust the equities of the parties.

This was an action to foreclose a mortgage given by Thomas Bunn to his brother Lewis Bunn. The bill made Moore and Davis defendants with the mortgagor, alleging that they claimed some interest in the property involved. Moore and Davis answered separately, each claiming title to a different tract of forty acres of the land covered by Bunn's mortgage, but neither claimed under Bunn's title, but adversely to it. It appeared that Moore and one Mitchell under whom Davis claimed, purchased the respective forty-acre tracts claimed by Moore and Davis at a public land sale November 15, 1855, and certificates of purchase were issued to them. That on February 20, 1856, Thomas Bunn appeared at the same land office and asserted a right of pre-emption to the land purchased by Moore and Mitchell by virtue of a settlement thereon commencing November 8, 1855. The officers accepted Bunn's entry and granted his certificate, although Bunn's claim was contested by Moore and Mitchell. Moore appealed to the commissioner of the general land office, who reversed the local officers' ruling and on this decision a patent was issued to Moore. Bunn, however, appealed to the Secretary of the Interior, who reversed the commissioner's decision and decided in favor of Bunn, and directed Moore to return his patent for cancellation, which Moore refused to do.

As to the forty-acre tract claimed by Davis, the court says:

> The question presented by the forty acres claimed by Davis is a very different one. Here, although the government has twice sold

the land to different persons and received the money, it has issued no patent to either and the legal title remains in the United States. It is not denied, however, that to one or the other of the parties now before the court the title equitably belongs, and it is the purpose of the present suit to decide that question.

The evidence shows that on the same day that Moore bought at the public sale the forty acres we have just been considering, Mitchell bought in like manner the forty acres now claimed by Davis, to-wit, November 15, 1855. He paid the sum at which it was struck off to him at public outcry, and received the usual certificate of purchase from the register and receiver. On the 20th day of February, 1856, more than three months after Mitchell's purchase, Thomas I. Bunn appeared before the same register and receiver and asserted a right, by reason of a pre-emption commenced on the 8th day of November, 1855, to pay for the south half of the southwest quarter and the south half of the southeast quarter of section 27, which includes both the land of Moore and Davis in controversy in this suit, and to receive their certificates of purchase. They accepted the money and granted his certificate. A contest between Bunn on the one side and Moore and Mitchell on the other, as to whether Bunn had made the necessary settlement, was decided by those officers in favor of Bunn, and on appeal, as we have already shown, to the commissioner, this was reversed and finally the Secretary of the Interior, reversing the commissioner, decided in favor of Bunn. But no patent was issued to Mitchell after the commissioner's decision as there was to Moore; and the Secretary therefore had the authority undoubtedly to decide finally for the land department who was entitled to the patent. *And, though no patent has been issued, that decision remains the authoritative judgment*

> *of the department as to who has the equitable right to the land.*
>
> The Supreme Court of Illinois, in their opinion in this case, come to the conclusion that the final decision of the Secretary is not only conclusive on the department, but that it also excludes all inquiry by courts of justice into the right of the matter between the parties.
>
> The whole question, however, has been since that time very fully reviewed and considered by this court in Johnson vs. Towsley, 13 Wall., 72. The doctrine announced in that case, and repeated in several cases since, is this:
>
> That the decision of the officers of the land department, made within the scope of their authority on questions of this kind, is, in general, conclusive everywhere, except when reconsidered by way of appeal within that department, and that as to the facts on which their decision is based in the absence of fraud or mistake, that decision is conclusive even in courts of justice, when the title afterwards comes in question, but that in this class of cases, as in all others, there exists in the courts of equity the jurisdiction to correct mistakes, to relieve against fraud and impositions, and in cases where it is clear that the officers have, by a mistake of law, given to one man the land which, on the undisputed facts, belonged to another, to give appropriate relief.

The court held that, by reason of the failure on the part of Bunn to make the application before the commencement of the public sale, the land being part of a section alternate to land granted for the construction of a railroad, his right under the decision of the secretary, rendered under a mistake of law, was subject to the better right of Davis. The case was remanded with directions for an affirmative adjudication that no lien had been created on the property by the Bunn mortgage.

It is important to observe that in the opinion of the court in Marquez vs. Frisbie, upon which the decision of the court below was based, the very language of the opinion in Moore vs. Robbins, here relied upon, is quoted with approval.

To much the same effect is the case of *Berthold vs. McDonald*, 22 Howard, 334. The facts in this case were as follows:

The act of Congress of March 2, 1897; provided that any person, or the legal representative of any person, who, on December 20, 1803, should have been for ten consecutive years prior to that day in possession of any tract of land, not exceeding two thousand acres, in the territory of Orleans or Louisiana, not claimed by any other person, should be confirmed in his title. The act provided for commissioners, and a hearing before them, on claims made under the act and provided that the decision of the commissioners should be final against the United States.

The board of commissioners on successive days issued certificates confirming the title to the same tract of land to two different persons. The act was a possessory one based on one of these certificates, and the action was defended under the other certificate. The court says:

> "The titles in controversy are equities only, no patent having been issued to either claimant upon the certificates granted by the board. With these equities the courts of Missouri were dealing on parol evidence, reach-

> ing behind the confirmation; and the question is, had they the power to do so?
>
> "Each party here has a good title as against the United States, the act of 1897 (2 Stat. at Large, 440) declaring that a confirmation of the board shall be conclusive against the government.
>
> "As both claims were filed in proper time, and the confirmations were had in due time, the equities are equal and balance each other, so far as they depend on the confirmations alone; and the question is, can the ordinary courts of justice go behind the right established by the record confirming Gratiot's claim? To do this proof must be heard impeaching his *prima facie* title, and which proof existed when the claim was filed with the recorder and acted on by the board. In other words, could the state courts go behind Gratiot's confirmation and no evidence compare his equity with that of Jeannette and adjudge who the true owner was?"

It was held that the court below was right in assuming this jurisdiction and determining which party had the superior right.

The doctrine of these cases is confirmed in the recent decision by the Supreme Court in *Orchard vs. Alexander*, 157 U. S., 372. This case was taken to the Supreme Court on writ of error to the Supreme Court of the State of Washington. In the Washington court one opinion was filed in the two cases of Orchard vs. Alexander and Pierce vs. Frace, it being stated by the court that the same questions were presented in both cases.

Orchard vs. Alexander, 26 Pac. Rep., 196.
Pierce vs. Frace, 26 Pac. Rep., 192.

The facts as stated in the opinion of the Washington court in Pierce vs. Frace were as follows:

The plaintiff brought an action to recover the possession of a tract of land, alleging that he had complied with all the provisions of the pre-emption law, and had received a final certificate. It appeared, however, that after the issuance of the final certificate to the plaintiff, the defendant filed affidavits with the commissioner of the general land office, alleging that the plaintiff had never established his residence on the land; the commissioner thereupon suspended plaintiff's entry and ordered a hearing, and on the hearing the register and receiver found that plaintiff had not established his residence as required, and advised that the entry be cancelled. The matter was taken on appeal successively to the commissioner and Secretary, the decision of the local officers affirmed and the entry cancelled. Afterwards the defendant made an entry of the land, offered final proof, received a final certificate and was in possession of the land when the plaintiff brought his suit. The opinion states that the two questions are presented by the record: First—Had the court jurisdiction of the subject matter of the action? Second—Had the officers of the land department jurisdiction to cancel the entry of the plaintiff?

Considering the contention of the defendant that the court had not jurisdiction of the subject matter, the court said:

> "The authorities cited are to the effect that the courts will not take jurisdiction to determine the title of adverse claimants to land until the land department is through with it, and the legal title has passed from the government, and are not applicable to a case like

> the one at bar, where the right of possession under the laws of the state is alone in question. It is true that the language of the court in the case of Hays vs. Parker, 2 Wash. T.,198, 3 Pac. Rep., 901, seems to warrant the contention of defendant in error; but the language used must be interpreted in the light of the facts of the case, and thus interpreted, is not inconsistent with the above-stated conclusions; for, though that was an action of ejectment, and the plaintiff relied upon a final receipt as in this case, yet it appeared that at the time the action was commenced the plaintiff was in the land office of the United States waging a contest with the defendant as to the validity of the right upon which his action was founded, and under these circumstances the court very properly refused to aid either party in so changing the situation as to affect, or have a tendency to affect, the contest then being waged in the land office."

Having thus disposed of the question of the jurisdiction of the subject matter the court proceeds to a discussion of the marits of the case and concludes that the officers of the land department had jurisdiction to reconsider the question of the validity of plaintiff's entry and that, inasmuch as it was finally determined that plaintiff had failed to establish the necessary residence, this finding of fact was conclusive and the plaintiff could not recover.

When the cases Orchard vs. Alexander and Pierce vs. Frace were considered by the Supreme Court of the United States, but one opinion was filed under the title of Orchard vs. Alexander, the facts, however, of Pierce vs. Frace being given as stated by the court.

And although the question of the jurisdiction of the subject matter was apparent on the record, and had been considered in the opinion of the state court with considerable elaboration, the Supreme Court examined the merits of the case and affirmed the judgment of the Washington court on the proposition that the finding of fact by the officers of the land department concluded the plaintiff, and that his final certificate was properly cancelled. From the whole opinion the conclusion is irresistible that if the decision of the land department had been erroneous and on a matter of law, the plaintiff would have prevailed.

A consideration of the case on its merits under these circumstances is tantamount to a plain declaration that the court had jurisdiction of the subject matter, for where a want of jurisdiction is apparent on the record, a case will be remanded without an examination of the other questions presented.

Northern Pacific Railroad Company vs.
Walker, 148 U. S., 391.

There can be no doubt that where final certificates have been issued under the authority of the land department evidencing the purchase of land from the government, such certificates stand as the evidence of the final judgment of the special tribunal to which the determination in the first instance of the disputed questions of law and fact has been committed. The theory of that branch of equity jurisprudence, which recognizes the authority of the courts to review the decisions of this special tribunal and correct its errors of law, rests upon the long established principles under which courts of equity reviewed the judgments of the courts of law and restrained their enforcement where private rights would thereby be invaded and manifest injustice done. This is declared by the Supreme Court in *Johnson vs. Towsley*, 13 Wallace, 72, to be the foundation of the jurisdiction under which the errors of the land department are corrected by the courts of equity.

In Moore vs. Robbins, *supra*, where the land department had finally decided as to the equitable right to the land and issued a final certificate, the court said:

> "And though no patent has been issued, that decision remains the authoritative judgment of the department as to who has the equitable right to the land."

If, therefore, the court has authority to review the judgments of this special tribunal and restrain their enforcement where private rights would be invaded by reason of the manifest error under which such judgments have been rendered, it follows that in the case at bar the court should assume jurisdiction to correct the erroneous judgment of the land department, as was done in Moore vs. Robbins.

At the last term, this court in two decisions considered questions closely related to those arising on this branch of the case, and the views expressed appear to support the position of complainants.

In *Bockfinger vs. Foster*, 190 U. S., 116, the court considered the nature of the title acquired by trustees under the Oklahoma Townsite Act of Congress of 1890. The act provided for the appointment of trustees by the Secretary of the Interior who were authorized to make entry of public lands in Oklahoma Territory occupied for trade and business. The trustees were directed by the act to cause the townsite to be surveyed into lots and blocks, and to ascertain the persons rightfully entitled to the various subdivisions and to convey to them the respective parcels which they were entitled to receive. The act directed the surplus lands to be sold or reserved for public use of the municipality under the direction of the Secretary of the Interior. The defendants, Foster and others, made a townsite entry as trustees under the act of the west half of a section, and Bockfinger claiming to be entitled to the southwest quarter of the section, brought the action to obtain a decree that the trustees held the title in trust for him and that they be compelled to convey to him. This court, considering the question of jurisdiction, held that the relief sought could not be granted "if the title acquired by the trustees was held by them in trust for the purposes of the act of Congress, and if, in every substantial sense, so far as real ownership is concerned, the land still belonged to the United States."

Applying this test it was concluded that the trustees only held the title as the officers or agents of the United States, for the purpose of carrying out the purpose declared by the Act of Congress; that the United States retained its hold on the land until conveyance by the trustees, when the questions of title became for the first time matters of private right, and the subject of determination by the court of competent jurisdiction.

It will be observed that the opinion emphasizes the fact that in every substantial sense the United States was the real owner of the land when the suit was brought. On the other hand, in the case at bar, the United States has parted with all beneficial interest in the land in controversy, and, except for the superior equity of the complainants, the defendants are the owners as against the world, the timber may be cut and removed and the lands are taxable.

In Cosmos Exploration Company vs. Gray Eagle Oil Company, 190 U. S., 301, the following facts appeared: The Cosmos Company claimed an equitable title to certain land selected by one Clarke under the Forest Reserve Act. This act gave the right to one owning land within the limits of any forest reserve, upon relinquishing it to the United States, to select an equal quantity of vacant public lands open to settlement in lieu of the land relinquished. The Cosmos Company filed its bill alleging that Clarke had conveyed to the United States a tract of land owned by him situated within a forest reserve, and had selected in lieu thereof the land in controversy; that the conveyance and selection were in accordance with the regulations of the Interior Department; that the district land officers had accepted the conveyance and selection papers, and had certified that the land selected was free from conflicting claims. The bill further alleged that at the date of the selection there was no known deposit of mineral or petroleum, but that after the selection the defendant filed in the district land office a protest against the selection on the ground that the land covered by it was within the limits of a placer mining location, and asked a hearing to determine the mineral character of the land; that the defendant then went upon the land and bored for and discovered oil and was engaged in pumping and removing it. It was further alleged that the complainant had succeeded to the rights of Clarke. The bill prayed, among other things, an injunction restraining the defendant from digging wells and taking oil from wells already dug, and a decree that the complainant was the equitable owner of the property; that the adverse claim of the defendant be adjudged to be unfounded.

There was no averment in the bill of any facts from which it appeared that any one except the complainant had acquired any title from the United States. The courts below had sustained a demurrer to the bill. It was claimed in this court by the complainant that the full equitable title to the land had passed out of the United States by virtue of the selection, and this court considered the sufficiency of the bill upon this ground. The court concluded that the supervision of selections of land in lieu of forest reserve lands relinquished was committed to the Land Department, and that under the regulations adopted there was committed to the General Land Office in every instance the determination of questions of law and facts arising upon such selections; that this determination required a finding that the land relinquished was part of a forest reserve and was properly relinquished to the United States, and that the land selected was of the character contemplated by the act ,and was free from adverse claims. It was therefore held that, inasmuch as these questions had not been passed upon at the time of the filing of the bill, the complainant had not acquired the equitable title, and that the jurisdiction of the land department to decide those questions in the first instance was exclusive.

The exhaustive discussion of the question upon which the case was decided tends to support the conclusion drawn from the earlier decisions of this court in the foregoing discussion, namely, that where, as in the case at bar, the Land Department has finally passed on all questions of law and fact and the full equitable title has passed out of the United States, the subject of the ownership of land so situated becomes a matter of private right and within the jurisdiction of the courts. If the contention of the defendants is correct, that so long as the naked legal title remains in the United States the courts cannot consider the question of private rights, that principle was the obvious objection to the bill considered in the case last above referred to, for it was conceded that the legal title to the land there in controversy was in the United States.

The decisions in Bockfinger vs. Foster and Cosmos Company vs. Gray Eagle Company are both based upon the substantial ground that so long as the real ownership of land is in the United States all questions relating to claims of persons seeking to acquire the title of the United States are committed to the Land Department, and that until such claims have been disposed of, the jurisdiction of this special tribunal is exclusive.

But in the case at bar the real ownership of the land has passed out of the United States, and the Land Department has rejected the claims upon which the title of the complainant depends.

(B.)—Because Complainants are at least Entitled to an Injunction against Trespass.

It may be argued that some of the foregoing citations rest upon a distinction between possessory remedies and those aiming at direct ~~jurisdictions~~ adjudications upon the title, and that although the former are, the latter are not, permissible before patent. Even though the distinction were supposed to be valid where no departmental controversies are *in fieri*, a suit for injunction against trespass destructive of the substance of the estate, would, for the purposes in hand, find its analogue in the possessory remedy. For it would be absurd to regard the temporary deprivation of possession as a sufficient ground for judicial interference prior to patent, while denying the like effect to a threatened destruction of the property. If a temporary loss of enjoyment or possession is an exigency justifying resort to the courts, surely like resort must be permissible to avert a permanent loss of enjoyment, through destruction of the property.

La Chapelle vs. Bubb, 69 Fed., 481.

That generally speaking an equitable title is a sufficient bases for an injunction against a trespass destructive of the substance of the property is clear.

Thompson vs. Lynam, 1 Del. Ch., 64.
Camp vs. Bates, 11 Conn., 51.
Webb vs. Boyle, 63 N. C., 271.
McLure vs. Sherman, 70 Fed., 190.

Hence in so far as complainants have established an equitable right to any of these lands whether patented or unpatented, the only question concerning the propriety of either a temporary or a permanent injunction is as to the existence of reasonable grounds for apprehending the cutting of timber by defendants. The Circuit Court of Appeals considered that there are such reasonable grounds of apprehension, and enjoined all the defendants from cutting timber *pendente lite.* (pp. 868, 869 of Record).

No direct evidence either of threats or of preparatory acts on the part of defendants is necessary. A reasonable probability of trespass, and well grounded apprehension of it, may arise from the nature of the situation. Thus, in Osborn vs. U. S. Bank, 9 Wheat., 738, 840, where it was sought to enjoin a State Auditor from enforcing an unconstitutional law, the court attached much less weight to the threat of the Auditor that he would enforce the law, than it did to the intrinsic probability of his enforcing it; remarking that "it is to be expected that a person continuing to hold an office would perform a duty enjoined by the government, which was completely within his power."

So, in the numerous cases of injunction against the transfer of negotiable paper, or the sale of personal property, it is customary to restrain the transfer upon the ground of its inherent probability, without other proofs, and without any allegation in the pleadings of intention to transfer, some of the bills in such cases making no reference to the probability of transfer, and others referring to the matter as one of probability only.

Johnson vs. Peterson, 6 Jones Eq. (N. C.), 12.
MacLean vs. Fitzsimmons, 80 Mich., 336, 342, 344.
Lloyd vs. Guerdon, 2 Swanst., 189.
Smith vs. Haytwell, 1 Ambl., 66.
Patrick vs. Harrison, 3 Bro. Ch., 477.

Ziegler vs. Beasley, 44 Ga., 56.
Moeckley vs. Gorton, 78 Ia., 202.
Belohradsky vs. Kuhn, 69 Ill., 547, 549.
Thurman vs. Burt, 53 Ill., 129.
Ferguson vs. Fisk, 28 Conn., 501.
Wilhelmson vs. Bentley, 25 Neb., 473, 484.
Merritt vs. Thompson, 3 E. D. Smith, 283, 285.

The reasonable principle illustrated by these cases is, that the imminence of the act sought to be restrained, may in appropriate cases, be as readily inferred upon the score of intrinsic probability, as upon the strength of overt acts or threats. Upon this question of intrinsic propability the facts in the case at bar are as follows:

It is alleged in the bill, that the several defendants are claiming and asserting adversely to complainants, all the rights of ownership, legal or equitable, with which they purport to have been invested by the several instruments underlying their respective claims; that all the lands are valuable almost wholly on account of the timber growing thereon, such timber constituting in all cases at least four-fifths of the value; that all of the lands were entered or purchased by the defendants with almost exclusive reference to the value of the timber thereon; that some of the defendants were engaged in cutting and removing timber from their respective parcels, and that all of them are threatening, proposing and intending, to cut and remove the more valuable portions of the timber growing upon their respective tracts. (pp. 12 and 14 of Record). The answers admit that the several defendants are claiming all the rights of ownership either legal or equitable, with which they purport to have been invested by the several instruments referred to in the bill, admit that the lands in controversy are largely valuable for pine timber, "but deny that they have cut or removed any timber therefrom, and deny that they *have* any intentions of so doing until such time as the controversy concerning the title to said lands shall be finally determined by the courts." (pp. 58, 59, 96, 115 of Record). It will thus be observed that to the charges of the bill, that the defendants were "threatening, proposing and intending" to cut the timber, the defendants interpose only a denial that they *have* any intentions of so doing.

The only instances of actual trespass shown by the proofs were by the three defendants, The Franklin Lumber Company, Michael Kelley and the Cloquet Lumber Company, the particulars of which will be presently noticed. But concerning the other defendants, it is to be considered that they also, severally claim to own the lands which they are here defending; that the value of the lands is almost wholly in the timber; that the normal mode of utilising or enjoying such lands is through the removal of the timber; that it is a fair presumption that one supposing himself to be the owner of property will use it in the normal and customary manner; that these are wild, timbered lands, which it would be burdensome for complainants to watch, and which it would be easy for defendants to surreptitiously denude of their timber. If it is true as argued by defendants, that for the present and for an indefinite future, complainants are without any means of judicially settling their titles against adverse claims, this would seem to be an added reason why the situation should be liberally construed in favor of their right to protection against impending trespass. This is especially so, if, as argued by defendants, and as held by the Circuit Court, (p. 845 of Record), com- jurisdiction, as to be disabled from recovering the value of timber wrongfully cut from lands to which they are equitably entitled.

SIXTH POINT.

It was solely through Error of Law that the Department was led to allow the several Entries of the Defendants.

The Railroad Company, at least as long ago as 1882 and 1883, paid a full consideration for these lands, by constructing that part of its road extending from Thomson Junction, Minnesota, to the Brule River, Wisconsin. (pp. 318, 319 of Record). As hereinafter pointed out in detail, all these lands were in 1883 duly selected in lieu of appropriate losses, under the direction of the Secretary of the Interior, and in compliance with his regulations. The lists of selection after being accepted, approved and allowed, by the local land officers, as hereinafter noted in detail, have lain in the Department for twenty years, without any claim by the Secretary of invalidity or irregularity.

or any act on his part of either approval or disapproval, except as in 1896 he cancelled all these selections upon the legally mistaken assumption that the grant did not extend further east than Duluth, (pp. 428½, 429, 430, 431 of Record), and except as in 1900, after his error of law had been established by the decision of this court in Doherty vs. Northern Pacific Railway Company, he rescinded his order of cancellation. (pp. 431, 432, 433, 491 of Record). The records disclose not the slightest trace of supposition on the part of the Secretary that prior to the Sundry Civil Act of 1898, there was any other ground for disallowing the railroad selections or allowing any of the entries under which the defendants claim, than the legal error as to the eastern terminus of the road.

SEVENTH POINT.

The Indemnity Selections of the Railroad Company were made under the direction of the Secretary of the Interior, and were not defeated in favor of subsequent entrymen by failure of the Secretary of the Interior to approve them.

The directions or regulations of the Secretary with respect to the selection of indemnity lands by

Railroad Companies, as formulated in 1883, were introduced in evidence as Exhibit 65 (pp. 541, 545-547). And see p. 185, for Secretary Teller's special circular of May 28, 1883, dispensing with the necessity of specifying losses in selections by the Northern Pacific. The selection lists are Exhibits 19 to 25, both inclusive, (pp. 375-411).

With respect to lands lost from the place limits, the provision of the granting act is, that within certain additional or indemnity limits, "other lands shall be selected by said company in lieu thereof."

Selection implies choice between the more valuable and less valuable lands. But because the company's selections are required to be made "under the direction of the Secretary of the Interior," it is argued that the best lands may be selected by the company only in the event that the Secretary does not require the acceptance of the worst. This is a construction by which the statute is reduced to a contradiction in terms, so as to provide, first, that the company shall have the power of selection, and then that the Secretary shall have it.

The reference to the direction of the Secretary, is, however, merely in recognition of the regulating and supervisory powers which with respect to all public land transactions are inherent in his office; merely declaratory of a power of direction in the Secretary which would have been implied though it had not been expressed.

The provision has reference to details of time, place and manner. The substantive right of choice or selection is in the company; the method of its exercise is subject to the Secretary's direction and control. Thus read the second clause qualifies the first without contradicting it, and when the Secretary has directed the manner, and the company, in the manner so prescribed, has declared its choice, the result is a vested right to the land thus selected.

The question thus presented is the same that was determined in the U. S. Circuit Court of Appeals for the Ninth Circuit in *Groeck vs. Southern Pac. R. R. Co.*, 102 *Fed. Rep.*, 32, where under the similar phaseology of the act granting lands to the Southern Pac. Co., the court was required to determine whether a selection of indemnity lands made comformably to the rules and regulations of the Secretary of the Interior but never approved by him, vested in the railroad company a right superior to that acquired by a patentee under a subsequent entry. The court said:

> "Upon the first point it is urged by the appellant that an absolutely essential step to the acquisition of the indemnity land was the approval of the selection thereof by the Secretary of the Interior. The granting act does not, by its terms, require that the selection shall be approved by the Secretary. The language of the act in that respect is that the indemnity land shall be selected by the company under the direction of the Secretary of the Interior. Act July 27, 1866, (14 Stat. 294, 3). It is urged that in this instance the selection was not made under the direction of the Secretary of the Interior, for the reason that that officer had approved the preemption entry of Groeck, to whom had been issued a patent for the land, and had denied the right of the appellee to select this tract of land, and that under the circumstances it was impossible that the selection could have been made under the secretary's direction. In the stipulation of the facts it is recited that the selection 'was in the form and ac-

companied by the certificates, affidavits, costs and fees required by law and the rules and regulations prescribed by the Secretary of the Interior and the Commissioner of the General Land Office,' and that the list was rejected 'solely because of the pre-emption settlement filing, entry and patent of the defendant Groeck.' It is stipulated also that the Secretary of the Interior had approved and issued a general circular of instructions relating to the adjustment of railroad land grants, prescribing the form and procedure for the selection by railroad companies of lands within the indemnity limits, and that the circular provided, among other things, that 'the lists must be carefully and critically examined by the Register and Receiver, and their accuracy tested by the plats and records of their office. When so examined and tested, and found correct in all respects, they will become final locations and you will, on the payment of the requisite fees to the Receiver, so certify.' It is admitted that the railroad company complied with this circular in all respects. We entertain no doubt that the steps so taken entitled the company to a patent."

* * * * *

"Considering the language of the grant, it must be held that indemnity lands are selected under the direction of the Secretary of the Interior whenever the grantee thereof complies with the directions which the Secretary has published for the regulation of such selection. The Secretary was not clothed with the power to defeat the grant of the indemnity lands, or by capricious regulation to affect the title which was intended to be conveyed. Nor has the Secretary in this instance made any regulation which has injuriously affected the right of the grantee. He had the power to prescribe in advance the method of making such selection, and,

> having prescribed it and his directions having been followed, it cannot be said that the lands were not selected in the manner required by the granting act. That the Secretary erroneously supposed that this land belonged to the defendant Groeck, and was not subject to selection as indemnity land under the grant, cannot affect the substantial rights of the grantee."

The reversal of this decision, in 183 U. S., 690, was solely on the ground that the Departmental withdrawal of the lands was unauthorized, and that Groek's entry ante-dated the railroad selection.

(A.)—A capricious or arbitrary failure of the Secretary to approve, is unimportant.

McHenry vs. Nygaard, 72 *Minn.*, 2, 12, is in point. The selection there involved was made under the Northern Pacific grant, and the contention there, as here, was that the right of the company could not vest without an approval of the selection by the Secretary of the Interior. The court said:

> "Under the categorical allegations of the complaint, it must be taken as true that the Railroad Company duly, and in compliance with all the requirements of law, selected this land for indemnity and duly filed a list of their selections in the land office in June, 1885, but that the land officers wrongfully and unlawfully refused to approve them. Although the selection of the lieu lands was to be made

> under the direction of the Secretary of the Interior, they were to be selected by the Railroad Company, and not by the Secretary. If the company was entitled to select the land, and did so in confromity with all the requirements of law, the officers of the land department had no authority arbitrarily to refuse to recognize and approve the selection. The rights of the company under its selection became fixed and vested, notwithstanding such rejection and refusal. *Southern Pacific R. R. vs. Wiggs*, 43 *Fed.*, 333; *St. Paul vs. Winona*, 112 U. S., 720. This selection was made about two years and four months before defendant made any application to enter the land as a homestead. This disposes of the case."

In *Southern Pac. R. R. Co. vs. Wiggs*, 43 *Fed.*, 333, 338, the same question was under consideration by Judge Sawyer. In reply to a contention similar to that of these defendants, the court said:

> "Although the selections of the lieu lands were to be made under the direction of the Secretary of the Interior they were to be 'selected by said company,' not by him; nor was the selection required to be approved by him as is required by some other acts; and when there was a deficiency, and the company selected lands open to selection, there was no authority vested in the Secretary to arbitrarily refuse to recognize and allow such selection. This would deprive the company of the selection expressly given by the statute and vest it in the Secretary, whereas the statute says in express terms: 'Other lands shall be selected by said company in lieu thereof.' "

(B.)—Neither is it important that the *Secretary* has failed to approve by mere neglect.

This would be so even though the approval of the Secretary were in terms required. The situation would then be analogous to that presented when the Secretary has disposed of lands through neglectful failure to determine whether they were swamp. It is settled law, that the courts will in such cases determine the question which the Secretary has neglected to decide.

Duluth & Iron Range R. R. Co. vs. Roy, 173 U. S., 587, 591.
Wright vs. Roseberry, 121 U. S., 498.

(C.)—*So*, if the *Secretary's* failure to approve is due to error of law.

Even where the Secretary's approval of the selections is in terms required, if it is withheld through mistake of law, as in the case at bar, and patent issued to the wrong party, equity will do what manifestly the Secretary would have done but for his misconstruction of law.

It was so held in *St. Paul R. R. vs. Winona R. R.*, 112 U. S., 720, 732, 733. The land there in controversy was claimed by each of the railroad companies under an act which provided for selection by the several companies "subject to the approval of the Secretary of the Interior." The land was taken by the court from the company whose selections of it had been approved by the Secretary and awarded to the company whose selection had been rejected. The court said:

> It is no answer to this to say that the Secretary of the Interior certified these lands to the State for the use of the appellant. It is manifest that he did so under a mistake of the law, namely, that appellant, having made the earlier location of its road through these lands, became entitled to satisfy all its demands, either for lieu lands or for the extended grant of 1864, out of any odd sections within twenty miles of that location, without regard to its proximity to the line of the other road. We have already shown that such is not the law, and this erroneous decision of his cannot deprive the Winona Company of rights which became vested by its selection of those lands.

To the same effect is *Sage vs. Swenson*, 64 *Minn.*, 517, where the provision was that the Secretary should "cause to be selected" the lands required for indemnity, etc. A selection of the land there in controversy was made by the railroad company under the general regulations of the Department. It was rejected by the Department for alleged irregularities in form, and the land was afterwards permitted to be entered as a homestead by the defendant Swenson. The Secretary was held by the court to have misconstrued the law in rejecting this selection, and the railway company's rights were held to have vested. The court said:

"The railway company's selection in 1883

> was in all respects a full compliance with the law, the grounds on which it was rejected, first by the local officers and next by the Secretary of the Interior, being erroneous and unauthorized. The company had done all that it could do and all that it was, in law, required to do, to perfect its title to that land; and it failed to attain its rights solely by reason of the error or mistake of executive officers of the government. Neither was the right of the company prejudiced by its act in October, 1891, in making a second or amended selection for the purpose of conforming to an unauthorized requirement of the Secretary of the Interior."

In the Joint Resolution of 1870, relating to Northern Pacific selections within the second indemnity limits, the word "select" is not used, the provision there being that in certain contingencies the company shall be entitled, "under the direction of the Secretary of the Interior, to *receive* so many sections of land," etc. But reading the resolution, as we must, *in pari materia* with the original grant, the meaning evidently is that the company is to "receive" these additional lands in the same manner as those under the original grant. In this connection the operation of the resolution of 1870 was merely to enlarge the area within which lands might be claimed by the company.

A question of interpretation quite analogous in principle was presented in St. Paul Ry. vs. Winona R. R., 112 U. S., 720, 730. An original granting act, which had provided for the selection of indemnity lands subject to the approval of the Secretary of the Interior, had there been amended by an act increasing the grant and providing that the additional lands should be *"indicated"* by the Secretary of the Interior. Construing the two acts together, the court accorded to the word "indicated" only the force of the word "approved." It was accordingly held that the burden and privilege of selection were still with the company, and that by reason of its failure to select, the company's rights in certain lands had become subordinated to those of another company. The case is of interest here only as indicating the extent to which ambiguities in a supplementary act are determinable by reference to the general scheme of the original legislation.

DEFENDANTS' CITATIONS DISTINGUISHED.

Of the decisions relied upon by the defendants as requiring approval by the Secretary, not one is in point. Every one of them is distinguishable in this respect; *that there was no attempt to show the existence in fact of losses in place justifying the selection.* It is somewhat remarkable that such should be the fact, but a close examination of the cases shows that it is literally true. Most of their cases are further distinguishable by the fact that the question presented was not as here, whether the company had by its selection acquired a vested right as against subsequent entries, but whether it had acquired the legal title, or a taxable title, etc.

Thus in *Wis. Railroad Co. vs. Price Co.,* 133 U. S., 496, which arose under an act providing for selections by the company, subject to the approval of the Secretary of the Interior, the only question was whether the interest acquired by the railroad company, through a selection of indemnity lands which had never been approved, was of such a character as to fall within the exception by virtue of which lands may become taxable as private property while the legal title remains in the United States. That this is a correct statement of the scope of the decision appears clearly from the remarks of the court found upon page 505; and it admits of no doubt that the same rule which the court there adopted would be applied to any cash entry or land warrant location which, however valid in law, had been rejected by the Department. A claimant of public lands under any form of entry, filing or selection, would doubtless be held to have no taxable interest so long as the government should continue both to hold the legal title and to deny his equitable claim. In this case moreover, as in all the others relied upon by defendants, there was no proof of facts justifying selection.

In the Supreme Court decisions relied upon in this connection by defendants, 112 U. S., 411, 117 U. S., 406, 141 U. S., 358, though some general expressions are to be found as to the necessity for selection and approval, the distinction between selection and approval, or the sufficiency for any purpose of selection alone, was not involved.

In *Messer vs. McRae*, 38 Minn., 409, neither selection nor approval was shown, and it was therefore held that the title to indemnity lands had not passed.

Upon the second trial of the same case, 44 Minn., 343, the only point determined was, that the issue of a patent to the railroad company imported an approval of its selection, so that although no losses justifying selection were shown, they were presumed, from the patent, which was also held to relate back to the date of the selection as against trespassers *ad interim*.

Resser vs. Carney, 52 Minn., 397, in which, as in the other cases, there was no proof of losses justifying selection, determined only that an unapproved railroad selection does not confer such a title as will satisfy a covenant of seisin.

In *Elling vs. Thexton*, (*Mont.*), 16 Pac. 391, as in the other cases, there was no proof of losses justifying selection, and the controversy was between the railroad selection and a desert land filing, from the rejection of which an appeal had been taken and was still pending in the Department. The selection was sought to be sustained without proof of facts justifying it, upon the theory that the certification of the selection lists by the local land officers, and the court's judicial knowledge that large quantities of lands in place had been lost through Indian Reservations, etc., were sufficient to raise a presumption of validity. It was held that upon this state of the proofs the railroad's claim of title was not one upon which ejectment could be maintained.

In *Jackson vs. LaMoure Co.*, 1 N. D., 238 (46 N. W., 449), no selection was shown to have been made nor any losses of place lands to have occurred. It was naturally enough held under these circumstances that it did not appear that the railroad company had acquired a taxable interest in the land, or that its grantee had acquired such an interest as to entitle him to enjoin the tax. Whatever is said about the necessity of approval is pure dictum.

In *Grandin vs LaBar*, 57 N. W. (N. D.), 241, also, there was an entire absence of proof of place losses, the contention being that immediately upon definite location the title of the company became vested, as well with reference to the indemnity lands as with reference to those in place (p. 242). The decision negatived this contention, and this indicates precisely its scope, except that it may also be regarded as holding that the mere cultivation and cropping of land by one of the claimants, while the rights of the contestants are in course of adjudication before the Interior Department, is not sufficient to justify recourse to a court of equity for an injunction.

In some of these decisions, the courts, *arguendo* only, have mooted the difference between a selection which is required to be made "under the direction of the Secretary of the Interior" and one which is required to be made "subject to his approval." If this question is fraught with any difficulty, it arises from an ambiguity in the latter of these two forms of expression. The word "approval" smacks of the exercise of discretion, and is suggestive of a function to be discharged by the Secretary with respect to each particular parcel of land after the company has declared its choice corformably in all respects to the regulations of the Department, in all of which respects it stands in marked contrast with the word "direction," which is the most appropriate word in the language, unless it be the word "regulation," with which to describe the general supervisory and ordinative power of the head of the Interior Department over *forms* of proceeding.

This question, however, seems not to be important, since no matter how much discretion those acts confer upon the Secretary which require selections to be "approved" by him, it would still ensue under the authorities already cited, that if the Secretary, wholly under the influence of a mistake of law, should as here, withhold his approval from a selection properly made, and patent the land to a subsequent entryman, the latter would take the legal title subject to a superior equity in the railroad company.

EIGHTH POINT.

All of these Lands were regularly and efficiently selected by the railroad company, in lieu of appropriate unsatisfied losses of place lands.

In our statement of the case, under the head of "Regularity of the Selections," (pp. 12-17 *supra*), we have already cited in detail, the uncontroverted proofs of complainants, respecting the selection of these lands in 1883, the order of Secretary Teller of May 28th, 1883, dispensing with the designation of losses; the subsequent designation in bulk, of losses, in pursuance of the later requirements of the Department; the final designation of losses rearranged tract for tract, conformably to the still later requirements of the department; the unappropriated, public and nonmineral character of these lands at the dates of selection; the location of the selected tracts partly within first and partly within second indemnity limits of the land grant; the written authority of the selecting agent, and the fact that none of the lost lands assigned as bases for these selections have ever been used as bases for the selection of other lands. We therefore refrain from repeating those citations here, but will take up seriatim, all of the objections urged by the defendants against either the substance or the form of the selections, beginning with the proofs of the unsatisfied losses on account of which they were made.

(A.)—The Losses Underlying these particular Selections are all Established by the Testimony.

In their Exhibits numbered 14, 27, 28 and 44 (pp. 304, 427, 428 and 485), plaintiffs present through transcripts of the tract books of the local land offices at Duluth, St. Cloud and Crookston, and of State swamp land selection lists, evidence of the time and manner of the several losses underlying the selections of the lands here in controversy. These transcripts show, not only that every tract of land thus assigned as a loss was in fact lost as alleged, but also show that all such parcels relied upon as bases for the selection of second indemnity lands, were lost between the date of the original grant, July 2, 1864, and the date of definite location.

Of all these lost lands, the only parcels with reference to which there seems to arise any question either of law or fact, are the Northwest Quarter

(NW¼) and the West Half of the Northeast Quarter (W ½ of the NE ¼) of Section 33, Township 47, Range 21), which are used as bases for the selection of the Northeast Quarter of the Southwest Quarter (NE¼ of the SW¼) of Section 19-54-15, entered by J. H. Grueber and sold to the Cloquet Lumber Company, being selection No. 323 of List 15 B; and the Southwest Quarter of the Northeast Quarter (SW ¼ of the NE ¼) of Section 21-54-15, entered by Emma Smith and sold to Johnson-Wentworth Company, as per selection No. 325 of List 15 B.; and the Northwest Quarter of the Southwest Quarter (NW ¼ of the SW ¼) and the Southwest Quarter of the Northwest Quarter (S W¼ of the NW ¼) of Section 25-48-21 which are relied upon as bases for the selection of the Southwest Quarter of the Northwest Quarter (SW ¼ of the NW ¼) of Section 3-54-10, entered by Ed Lynch and sold to the Olean Land Company; and the Southeast Quarter of the Northwest Quarter (SE ¼ of the N W¼) of Section 33-55-10, entered by Eva Spitler and sold to Olean Land Company (See Selection No. 30 of List 16). With respect to these parcels the only circumstance suggesting a doubt as to their being valid bases for second indemnity selections, is that they lie within the limits of the withdrawal of May, 1864, on account of the iocation of the general route of the L. S. & M. R. R. At another point in our argument we show clearly that these lands were not lost to the Northern Pacific grant on account of the L. S. & M. Grant until the definite location of that road in 1866. It follows that these particular parcels now under consideration were in fact valid bases for the second indemnity selections in support of which they the assigned. The error of the Department arose from a misapplication to a withdrawal on general route, of a rule applicable only to withdrawals on definate location.

Exhibit No. 44 consists of three separate transcripts certified by the United States Land Office at St. Cloud. That office is a conglomerate of half a dozen old United States Land Offices formerly covering different portions of northern Minnesota. It will be observe that in their first transcript certified under date of January 5, 1901, there appeared toward the end of the list, five parcels apparently not entered until after the definite location of the Northern Pacific Railroad in November, 1871. The other two transcripts, bearing date January 19th, were supplied to correct this misleading appearance which had been caused no doubt by failure to consult some of the old books in the office, and to show that upon the books of the office, there in fact appear upon these five tracts, earlier entries made between August 1, 1868, and December 30, 1870, and cancelled at different times between the years 1872 and 1877; thus showing that the lands were in fact lost to the grant under such circumstances as to furnish valid bases for second indemnity selections. It thus appears that there is no blemish upon any one of the losses underlying the indemnity selections here in controversy. It also appears that none of them have been heretofore used as bases for other selections. (pp. 154, 155).

(B.)—The Proofs also show an Enormous Deficiency of Place Lands and First Indemnity Lands in Minnesota.

By the report of the Commissioner of the General Land Office of June 7, 1900, (Exhibit 36, p. 435), it appears that the loss of lands in place limits was 1,310,603.22 acres; and the available land in first indemnity limits was 635,014.84 acres, or 675,588.38 acres less than the quantity required to make good the losses in place limits. This, as is expressly stated by the Commissioner (p. 436), *is after charging the company with all of the lands now vacant in the first indemnity limits*, such vacant lands appearing to amount to about 12,000 acres.

According to the testimony of Mr. Marvin, the lands lost in place limits amounted to 1,320,466.89 acres, the available first indemnity lands amounted to 453,981.22 acres, leaving in place and first indemnity limits a deficiency of 866,485.77 acres (pp. 11, 12, 13. Vol. 2; and plaintiff's original Washington Exhibits 1, 2, 4). The differences between Mr. Marvin's statement and those of the department are explained in detail by him (pp. 136, 137, 138), but it would be a waste of time to consider them, in view of the enormous proportions of the deficiency as conceded by the Department.

(C.)—The Proofs also Show a Large Surplus of Second Indemnity Losses Still to the Credit of the Company.

By his report of May 3rd, 1900, with reference to the second indemnity lands of the Northern Pacific Company, the Commissioner of the General Land Office found a subsisting credit of only 27,678 acres in favor of the company after allowing bases for all the lands heretofore approved to the company as second indemnity selections and for the lands awarded to the company by decree of court in 139 U. S., 1, (p. 496). In response to a suggestion of the Commissioner that the company may have exhausted its rights of second indemnity selection (p. 497-8), the Washington attorneys for the railroad company had submitted to the Commissioner a list of lands aggregating 359,241.28 acres which the company claimed had been lost in Minnesota, west of Thomson Junction, under such circumstances as to authorize selections of lieu lands within the second indemnity limits. As the second indemnity lands previously approved by the Secretary, or awarded by the decree of court, amounted to only 290,881.63 acres, the lists thus filed by the company disclosed a balance of 65,359.65 acres of second indemnity losses west of Thomson Junction still standing to the credit of the company. The list thus filed by the railroad company did not purport to be a complete list of second indemnity losses, but was filed merely to refute the suggestion that second indemnity selections might already have been approved to the company to the full extent of its rights. By reference to summary Statement F attached to the Commissioner's report of May 3rd, (Exhibits 49, 66, pp. 496, 565), it will be seen that, aside from some minor matters unnecessary to be considered here, the commissioner arrived at his result of a subsisting credit of 27,677 acres by adding to the company's lists of second indemnity losses west of Thomson Junction 5,181.17 acres, which had not been included in the lists filed by the railroad company, but the existence of which the investigations of the Commissioner had disclosed; by also adding second indemnity losses found by the Commissioner in Minnesota, east of Duluth, to the amount of 28,431.84 acres; and by rejecting from the list of second indemnity losses filed by the company, as aforesaid, 71,013.51 acres (496-499).

Of the lands thus rejected by the commissioner, it is clear that he was in error as to at least 59,667.89 acres of them. The first item rejected by the commissioner consists of 2,421.34 acres of lands which, as shown by Statement "B" attached to the Commissioner's report (Defendant's Exhibit "F"), were parted with by the government under various forms of miscellaneous entry subsequent to July 2, 1864. The ground upon which the commissioner rejects these losses is that at periods of from two to ten years after the government had parted with its title, these lands appear to have been claimed by the state as swamp lands. There is no testimony to indicate that the lands were in truth swamp lands, and the fact that they were otherwise disposed of by the Secretary, who was charged with the duty of determining whether lands were swamp or not, would seem to amount to a finding of fact that the lands were not swamp, and that the tardy claim of the state to the lands as swamp lands was as groundless as it was ineffectual. *Michigan, etc., Co. vs. Rust,* 168 U. S., 589. Neither does the commissioner, in his report of May 3rd, pretend to find or affirm that the lands were swamp. He rejects them as second indemnity losses only upon the ground that *if* swamp, as claimed by the state, they became the state's prior to July 3, 1864.

But on another ground it admits of no doubt that by the proviso of Section 1 of the Swamp Land Act of March 12, 1860, (12 U. S. Stat. at Large, 3), lands circumstanced as these appear to have been, were expressly excepted from that grant. In the original Swamp Grant Act to the State of Arkansas of September 28, 1850, (5. U. S. Stat. at Large, 519), provision was made for the confirmation of the State title by the issuance of a patent. The proviso above mentioned to Section 1 of the Minnesota Act is as follows: "Provided that the grant hereby made shall not include any lands which the government of the United States may have reserved, sold or disposed of in pursuance of any law heretofore enacted, prior to the confirmation of title to be made under the authority of said act." These 2,421.34 acres will be found described in Adjustment List 9, as contained in defendants' Exhibit "F," (pp. 652-657). They appear to have been disposed of through pre-emption claims, military bounty land warrants, homestead entries agriculture college scrip, etc., at various times between the date of the Northern Pacific grant and the definite location of the road.

Another group of lands rejected by the Commissioner consists of 6,493.97 acres which, by a singular inadvertence, he insists upon treating as not within the primary limits of the Northern Pacific road. By reference to the department map or withdrawal diagram, marked Exhibit 5, the court will see that this is an error into which the Commissioner was led by having regard to the place limits of the Northern Pacific grant as they were adjusted by the Secretary at a time when it was the departmental theory that the eastern terminus of the road was at Duluth; and that all these lands lie confessedly within the place limits of the grant as established with reference to the line of road extending from Thomson Junction through Superior to Ashland.

The Commissioner also refused to treat as second indemnity losses 50,752.58 acres which inured to the Lake Superior & Mississippi road.

His grounds for thus treating these lands is, that though approved by the Department to the L. S. & M. Company, they are really a part of the Northern Pacific grant and can be reclaimed by that company. The evidence is conclusive that the Commissioner has fallen at this point into a misapprehension of facts. Detailed descriptions of these fifty thousand acres will be found in Statement B. attached to the Commissioner's report of May 3, 1900, which was introduced in evidence as defendant's Exhibit "F." (p. 641). By a comparison of those descriptions with the withdrawal diagrams marked Exhibits 3, 5, 6, it will appear, as is also shown by the direct testimony of the witness Marvin, as the result of a personal examination made by him, that all these lands lie within the 10-20 mile, or first indemnity limits of the L. S. & M. road. The Commissioner, it is clear, has simply confused this list of lands, concerning which no such controversy as that which he suggests could possibly have arisen between the two railroad companies, with another list of about equal size lying within the 20-30 mile or second indemnity limits of the L. S. & M. road, concerning which a controversy like that referred to by the Commissioner did arise between the two companies, owing to the fact that such second indemnity lands of the L. S. & M. road inured to the company, not by virtue of its original grant, which was anterior to that of the Northern Pacific, but by virtue of the later Act of July 13, 1866, providing for 30-mile indemnity limits under certain circumstances (14 U. S. Stats. at Large, 97). It is therefore an uncontroverted fact that all of this fifty thousand acre group of lands are lands which not only actually, but rightfully, inured to the L. S. & M. road under its original grant antedating that to the Northern Pacific. The evidence shows that all these lands were withdrawn for the benefit of the L. S. & M. road immediately upon the definite location of that line in 1866 (Exhibits 76, 77, pp. 599-600). Thus no question could possibly arise as to these losses being valid bases for second indemnity selections by the Northern Pacific Company, were it not that on May 5th, 1864, a map of general route of the L. S. & M. road was filed in the office of the Secretary of the Interior, and on the 26th day of May of the same year, and a few weeks before the date of the Northern Pacific grant, an order was made for the withdrawal of the odd numbered sections for ten miles on either side of the L. S. & M. road, as thus *generally* located. (See Plaintiff's Exhibit 69; Defendant's Exhibit X, pp. 571, 753). This general route was several miles further west than the L. S. & M. road as it was afterwards definitely located and constructed. The limits of this withdrawal on general route, and the relation in which these limits stand to the subsequent limits of the grant upon definite location, are shown upon complainants' Exhibit 71, (p. 577).

By reference to that exhibit it will be seen that the lands lying within the 10-20 mile or first indemnity limits of the L. S. & M. road, as definitely located, lie partly within and partly without the limits of the withdrawal made on location of general route. The testimony shows that of the lands which inured to the L. S. & M. road as indemnity lands lying within its 10-20 mile limits, by virtue of the withdrawal on definite location made in 1866 as above mentioned, thirty-seven thousand acres lay entirely outside the limits of the withdrawal on general route. (Exhibit 74, p. 591). As to these lands, no possible doubt can exist that they are valid bases for Northern Pacific second indemnity selections. Such indeed is the conceded doctrine of the Interior Department, Exhibit 72, (p. 579).

Deducting this acreage from the 50,752.58 acres rejected by the Commissioner in his report of May 3rd, 1900, (p. 496), we have a balance of 13,752.58 acres which were affected by the L. S. & M. withdrawal on the general route of May, 1864, and concerning which there arises this question, to-wit, whether a withdrawal on location of *general route only*, has, like a withdrawal based on definite location, the effect of exempting the lands from subsequent congressional grants. We elsewhere discuss this question at length and show that this is not the effect of such a withdrawal, and that it was a mistake of law for the department to treat any of these lands as lost prior to the date of the Northern Pacific grant.

It thus appears that out of the 71,013.51 acres of losses west of Thomson Junction claimed as bases for second indemnity selections by the Northern Pacific Company and rejected by the Commissioner in his report of May 3rd, (p. 496), at least 59,667.89 acres were erroneously rejected. Correcting the Commissioner's report by adding this acreage to the 27,678 acres conceded by the Commissioner as still standing to the credit of the second indemnity account of the company in Minnesota, we have a total subsisting credit of 87,345.89 acres; and a credit of 73,593.31 acres. even though the contentions of the defendants with respect to the effect of a withdrawal on general route, were upheld.

In order that the court might be doubly assured that the Northern Pacific Company has not exhausted its second indemnity rights, we have, since the commencement of this action, had an exhaustive examination made of the records of the General Land Office at Washington, so far as they relate to the losses and selections under the Northern Pacific grant in Minnesota, by Mr. Earl L. Marvin, for many years an employee in the Land Department of the Northern Pacific Company, and an expert in Land Office records and public land grants and entries. The examinations of Mr. Marvin were made upon two different occasions and occupied his own time and that of an assistant, Behrend Holsberg, whose testimony and its admissibility in proof of facts of so voluminous a nature is elsewhere discussed. The results of Mr. Marvin's examination are succinctly stated in tabulated form in the four exhibits 1, 2, and 100 and 101, (pp. 275, 276, 171, 173).

In his first examination, Mr. Marvin, taking as an index the Government adjustment sheets on file in the General Land Office with reference to lands in the place limits of the Northern Pacific Company in Minnesota, and verifying by reference to the tract books and withdrawal diagrams the area and location of every tract within those limits in the State of Minnesota, and noting the date and manner of the disposition of every tract within those limits, found the total area within the place limits in Minnesota to be 2,865,-409.25 acres, and the total loss of lands from those limits prior to definite location to be 1,320,466.89 acres. In the first indemnity limits he found a total area of 1,491,067.41 acres, of which, according to his further and second investigation, the government had disposed of, prior to the date of the Northern Pacific grant, 430,903.71 acres, and between the date of the grant and dates of definite locations 454,026.20 acres, making a total of lands lost from the first indemnity limits, prior to definite location, of 884,929.91 acres. This left in the first indemnity limits available lands to the extent of 606,145.50 acres, or 714,321.39 acres less than the losses in place limits, which thus represents the deficiency in the grant in Minnesota.

Relative to the extent of the second indemnity losses which had been suffered by the company, it was ascertained by Mr. Marvin that at the dates of definite locations there were available to the company in the place limits 1,545,943.36 acres, and in the first indemnity limits 606,145.50 acres, or a total of 2,152,-088.86 acres, thus leaving a total deficiency in place and first indemnity limits of 714,321.19 acres, which must be satisfied either from the second indemnity limits or not at all. This deficiency, however, the company, under the terms of the Joint Resolution of 1870, are entitled to satisfy out of the second indemnity limits only to the extent of lands disposed of subsequently to the date of the grant and prior to definite location. Upon this subject Mr. Marvin found that within this period, between the date of the grant and the dates of definite location, there were lost in Minnesota from the place limits 438,568.21 acres. This figure represents the quantity of second indemnity lands to which the company is entitled under the Joint Resolution of 1870 for losses occurring from the *place limits* in Minnesota. The total quantity of second indemnity lands thus far approved and decreed to the company in Minnesota, as hereinbefore shown from the report) of the Commissioner, is 290,881.63 acres, thus leaving still to the credit of the company in Minnesota, on account of losses from the *place limits*, 147,686.58 acres to be taken from the second indemnity belt, if they can be found.

It will be observed that either the figures of the Commissioner of the General Land Office, after allowance has been made for the manifest errors which we have pointed out and corrected, or those of Mr. Marvin, accredit the railroad company with second indemnity claims much more than ample to meet the requirements of this case. If, as seems impossible, it should become necessary to determine the relative weight of the Commissioner's figures and those of Mr. Marvin, the Court it would seem could hardly fail to look upon the Commissioner's figures with a considerable degree of distrust, inasmuch as five-sixths of his deductions from the claims of the company in his report of May 3rd, 1900, have been proven to be palpably and almost unpardonably erroneous.

Concerning the weight to be attached to the figures of Mr. Marvin, it would be difficult to conceive of testimony being so delivered as to merit a higher degree of regard than Mr. Marvin's. Considering the intricacy of the subject with which he had to deal, we confidently claim that his deposition is as faultless and as much suggestive of good faith, accuracy and complete mastery over a difficult subject as any deposition ever given by anybody anywhere. No one can read it without forming senti[illegible]ts of admiration for the candor and acumen of the witness.

The Commissioner's figures and those of Mr. Marvin, hereinbefore discussed, relating to the second indemnity losses, are constructed upon the theory that the company is entitled to go into the second indemnity limits only for indemnity against losses *from the place limits*. But manifestly this is a misconstruction of the law. Under the terms of the Joint Resolution of 1870, the company is entitled to indemnity for losses occuring between the date of the grant and the date of definite location from the combined place and first indemnity limits. This proposition we discuss elsewhere with the other questions of law. Of its accuracy there seems to be no doubt whatever.

If the figures relating to the second indemnity losses are reconstructed upon this basis, the claims of the company to second indemnity are seen to be immensely larger than the department has been disposed to concede. Thus, if to the 438,568.21 acres found by Mr. Marvin to have been lost from the place limits between the date of the grant and definite location, we add the 454,926.20 acres which he found to have been lost during the same period from the first indemnity limits, we have a total of 892,594.41 as the total losses occuring between those dates, within the meaning of the Joint Resolution of 1870. Under the terms of the Joint Resolution, however, the second indemnity selection cannot exceed that part of this deficiency which arose from losses occuring between the date of the grant and the date of definite location, which, according to Mr. Marvin's figures, is 714,321.39 acres. This, therefore, is the acreage which the company is still entitled to take from its second indemnity limits in Minnesota, if the land can be found.

(D.)—LEGAL QUESTIONS ARISING IN CONNECTION WITH THE PROOFS OF LOSSES.

(1.)—The Reports of the Commissioner of the General Land Office of May 3d and June 7th, A.D. 1900, Showing the Status of the Northern Pacific Grant as Respects First and Second Indemnity Lands in Minnesota, are admissible in Evidence as the Finding of a Public Official, with Reference to Facts of a Public Nature and Interest, made in the Discharge of Official Duty.

Inquisitions made under competent public authority to ascertain matters of public interest and concern are said to be analogous to proceedings *in rem* to which no one can strictly be said to be a stranger.

Wadsworth vs. Sharpstein, 8 N. Y., 388, 392.

So the report of authorized public officials, as to the condition of a city treasury at a given time, is admissible in evidence of the facts therein stated.

Bardsley vs. Sternberg (Wash.), 52 Pac., 250, 254.

To the same general principle see:

Eberic vs. St. Louis Public Schools, 11 Mo., 247, 262.
Seavy vs. Seavy, 37 N. H., 125.

The General Land Office is a special tribunal to whom are referred for final determination (except as to questions of law) all matters relating to the administration of public land grants Not only is it the appropriate tribunal for the investigation of the conflicting claims of different persons or corporations to the same lands, but it is its duty to make quisition to the same lands, but it is its duty to make general inquisition with respect to the lands falling within the operation of such grants. These inquisitions, aside from those questions of law which confessedly are reserved for the courts, turn wholly upon an inspection of the records of the General Land Office; and surely no doubt can arise that a compilation from these records made by the Commissioner of the General Land Office, upon his official responsibility and oath, and with the aid of assistants specially trained and experienced in records of that class, must be at least as persuasive as any results which could be attained by the court through an examination by one of its masters of these same records, if they had all been produced in evidence. It appears moreover that there are on file in the Department, open to the inspection of all parties, itemized statements and adjustment sheets, showing in detail just how the Commissioner reached his results and how he treated each tract of land entering into his computations, so that, in case of error on his part as to either the law or the facts, it is feasible for either party to establish the error and call for its correction.

(2.)—The Testimony of the Witness Marvin as to the Extent and Character of the Losses Suffered by the Northern Pacific Co., from the Place and First Indemnity Limits of its Grant, is Admissible in lieu of the Records, on Account of the Extremely Voluminous Character of the Facts to be proven.

The general rule requiring the production of the best evidence of which the case in its nature is susceptible, is adopted for the prevention of fraud. "For when it is apparent that better evidence is withheld, it is fair to presume that the party had some sinister motive for not producing it, and that, if offered, his design would be frustrated."

1 Greenl. Ev., Par. 82.

This, like the other rules of the law, is not broader than its reason, and ceases to be operative whenever and wherever it becomes more productive of evil than of good. Thus, as there is not much probability of an attempt to misrepresent the contents of a public record open to the inspection of all, and as the production of such records in court would involve some measure of inconvenience, there long ago arose the well recognized exception by virtue of which the contents of such records are permitted to be proven by examined copies.

1 Greenl. Ev., Par. 91.

> "A further relaxation of the rule has been admitted, where the evidence is the result of *voluminous facts*, or of the inspection of *many books and papers*, the examination of which could not conveniently take place in court." * * "So a witness who has inspected the accounts of the parties, though he may not give evidence of their particular contents, may be allowed to speak to the general balance, without producing the accounts; and where the question is upon the solvency of a party at a particular time, the general result of an examination of his books and securities may be stated in like manner."

1 Greenl. Ev., Par. 30.

The relaxation is analogous to the indulgence in favor of a general allegation in pleading, "when the matters to be pleaded tend to infiniteness and multiplicity, whereby the rolls shall be incumbered with the length thereof."

Stephens Pleading, 359, 360.

So in the case of inscriptions on fixed tables, mural monuments, gravestones, etc., although in many cases their production in court would be a matter of not very serious inconvenience.

1 Greenl. Ev., Par. 94.

So the inconvenience incident to the production of books that are outside the jurisdiction of the court is sufficient to justify secondary evidence of the fact that they do not contain entries of a certain class.

Burton vs. Driggs, 20 Wall., 125, 136.

So in any case where it becomes necessary to prove results which can only be attained by examination of voluminous accounts, the testimony of competent and experienced persons as to the results of such examinations are admissible in evidence.

Woodruff vs. State, 63 Ark., 157.
Rogers vs. State, 99 Ind., 218, 228.
Equitable Co. vs. Stout, 135 Ind., 454.
Hollingsworth vs. State, 111 Ind., 289, 297.
State vs. Caldwell, 79 Ia., 433, 438.
State vs. Findley, 101 Mo., 223.
Roberts vs. Doxon, Peake, 83.
Meyer vs. Septon, 2 Stark., 274.

In many of these cases the books which had been examined were, it is true, produced in court for the inspection of the adverse parties.

In the case at bar such a production of documents is manifestly impracticable, on account of their public character and their remoteness from the seat of judicial injury. Moreover, the occasion or necessity for such a production disappears for the same reason; since, being public documents, they are, and at all times have been, accessible to both parties. Moreover, at the conclusion of the witness Marvin's examination, complainants expressly offered to allow such time, if any, as counsel for defendants might desire for the examination of the records which had been referred to by the witness, or other records of the General Land Office, and offered to produce for the inspection of counsel, at the General Land Office, any of such records, consenting either that the cross examination of the witness might be deferred until such examination should have been made, or to reproduce the witness at any time, either in Washington or in Duluth, for the purpose of further cross examination. (pp. 156-159).

In fact, however, the exceptional rule is not so narrow as to require necessarily the production in court of the documents examined, even though they are of a private character.

N. P. R. R. Co. vs. Keyes, 91 Fed., 47, 58.

(3.)—The Determination of the Interior Department as to the Twenty, Thirty and Forty Mile Limits of the Grant are Final and Conclusive.

Such has been the accepted doctrine throughout the entire administration of congressional land grants. No instance can be found, it is believed, of a disturbance of the limits so established, either by the voluntary action of the department or by judicial interference. All attempts to invoke such action have been abortive.

Daily vs. Marquette, etc., R. R. Co., 19 L. D., 148.
M. K. & T. Ry. Co., 11 L. D., 130.
Matter of C. W. Aldrach, 13 L. D., 572.
McLean vs. U. P. R. R. Co., 22 L. D., 227.
Gibson vs. N. P. R. R., 15 L. D., 35.
Rogers vs. U. P. R. R., 6 L. D., 565.
Hardman vs. The Dalles Military Road Co., 23 L. D., 94.

The method pursued by the Department in locating the limits will be found fully described in *Scott vs. K. P. R. R. Co.*, 5 L. D., 468, 472.

How and why the duty of thus locating the granted limits falls of necessity upon the Department, as incident to its general administration of the grant and its ascertainment of the lands granted; how by force of circumstances, the withdrawal diagrams have become the formal and standard expression of the Department's finding or determination upon this subject; the impracticability of revising or reversing the determinations so made upon subsequent claims of inaccuracy; and how exclusively the question of limits must be deemed to concern only the government on the one hand and the railroad company on the other, are all clearly developed in the foregoing Department decisions.

(4.)—The Joint Resolution of 1870 is Applicable to all Lands Lost by the N. P. Co. from its Combined Place and First Indemnity Limits Between the Date of Grant and Date of Definite Location.

The figures of the Department, relative to second indemnity losses, are constructed upon the theory that the only losses for which the company is entitled to seek indemnity within the second indemnity belt, are those occuring within the prescribed period from the primary or place limits of the grant. This theory is manifestly erroneous. The material part of the Joint Resolution of 1870 is as follows:

> "And in the event of there not being in any State or Territory in which said main line or branch may be located, at the time of the final location thereof, the amount of lands per mile granted by Congress to said company, *within the limits prescribed by its charter*, then said company shall be entitled, under the directions of the Secretary of the Interior,

> to receive so many sections of land belonging to the United States, and designated by odd numbers, in such State or Territory, within ten miles on each side of said road *beyond the limits prescribed in said charter,* as will make up *such deficiency*, on said main line or branch, except mineral and other lands as excepted in the charter of said company of eighteen hundred and sixty-four, to the amount of the lands that have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of subsequent to the passage of the act of July two, eighteen hundred and sixty-four."

The word "limits" wherever used in this provision has reference manifestly to the combined primary and first indemnity limits. This is as clearly true where the reference is to the quantity of lands "within the limits prescribed by its charter," as it is in the clause providing for the 10-mile second indemnity belt "beyond the limits prescribed in said charter." It is to satisfy "such deficiency" as, at the date of definite location in any state, may be found to exist within the full limits prescribed by the original charter that the company is entitled to resort to the 10-mile belt lying next beyond those limits. It is rarely that one encounters a case of clearer or more imperative grammatical construction. Nor is there any ground for supposing that Congress spoke inadvertently upon this subject. If we are accustomed to think of indemnity lands as a substitute for lands lost within the primary limits, it is merely because the instances of a second indemnity belt are extremely rare. There are but few to be found either in national or state land grant legislation. Of these few, there are, no doubt, some which merely increase the distance which the company may go in search of indemnity lands, without entering upon any new definition of the class of lands on account of the loss of which, indemnity may be claimed. Such however, is not the character of this act, which not only opens a new field to indemnity selections, but industriously formulates a new definition of the losses to be indemnified against. And neither from a logical or practical business point of view is there anything in the least degree abnormal or unreasonable in providing indemnity for lands lost from the combined primary and first indemnity limits. The principle of the Joint Resolution of 1870, is to indemnity the company against such prejudice as it may suffer from the delay which had been and might be incident to the definite location of its road. And in so far as during the period of such delay lands were lost from the first indemnity limits which otherwise might have been selected by the company, the effects upon the government and upon the company were identical in all respects with those produced by the loss, during the same period, of lands in place.

Hence we say that the letter and the principle or reason of the law equally require the construction for which we here contend. If a different construction has been adopted by the Department, it is in the nature of a mere inadvertance or improvidence. The Department has merely failed to observe obvious differences between the terms of this grant and others with which it may have been accustomed to deal.

(5.)—Lands withdrawn from Entry and Sale May 26th, 1864, for the Indemnity of the Lake Superior & Mississippi R. R. Co. upon the Location of the General Route of that Road, were not then or thereby Lost to the Northern Pacific Grant, or so Segregated from the Public Domain as to be excepted from that Grant. They were lost and segregated only when withdrawn November 2d, 1866, upon Definite Location of the Lake Superior & Mississippi Road. They are therefore valid Bases for Northern Pacific Second Indemnity Selections.

The grant to the Lake Superior & Mississippi Railroad Company was approved May 5th, 1864; that to the Northern Pacific, July 2nd, 1864. For the benefit of the Lake Superior & Mississippi Company, orders withdrawing lands from entry and sale, were made May 26th, 1864, upon location of its general route, (p. 764 of Record); and on November 2nd, 1866, after its definite location, (pp. 495, 765 of Record).

Did the departmental withdrawal of Lake Superior & Mississippi indemnity lands upon the location of the general route of that road in May, 1864, so segregate such lands from the public domain as to shield them from the operation of the subsequent grant to the Northern Pacific, July 2nd, of the same year? In other words, are such lands, by reason of such withdrawal on location of general route, to be regarded as having been lost to the Northern Pacific prior to the date of its land grant?

As already pointed out, this question has here a twofold materiality: (a). As shown in sub-heading "A" of this Eighth Point of our brief, eight forty acre tracts of Lake Superior & Mississippi lands so situated, are by the Northern Pacific assigned as bases for the selection of eight forty acre tracts of the second indemnity lands here in controversy. (b). As shown in sub-heading "C" of this Eighth Point of our brief, the Commissioner of the General Land Office in his report of May 3rd, 1900, (p. 496 of Record), refused to recognize as valid bases for Northern Pacific second indemnity selections, thirteen thousand seven hundred and fifty-two and 58-100 acres of Lake Superior & Mississippi indemnity lands, upon the ground that they were lost to the Northern Pacific grant May 26th, 1864, when withdrawn on location of the General Route of the Lake Superior & Mississippi road. This we claim is manifest error of law, due to the ascription by the Commissioner to such a withdrawal, of effects which attach only to withdrawals on *definite* location.

The force, purview and meaning, of a withdrawal of public lands from entry and sale, *which is based upon the general location of a railroad route*, have been repeatedly defined by this court. It is settled law that *such* a withdrawal does not so far segregate the land from the public domain as to exempt it from later legislative grants. In other words, a so-called general route withdrawal, is not a withdrawal from, or as against, legislative control and disposition.

Northern Pacific R. R. Co. vs. Sanders, 166 U. S., 620, involved a controversy over land which after having been withdrawn as "place" land for the Northern Pacific Company by the order of the Department in 1872, upon a location of the general route of the road, was filed upon as mineral land by sundry persons under an act of Congress of July 26th, 1866, relative to the disposition of mineral lands. Thus, the mineral land act was later than the railroad grant, and the filing under it was later than the withdrawal of the land for the benefit of the railroad company upon location of its general route. The decision against the railroad company, was squarely grounded by the court upon the principle that neither by a general location nor by a Departmental withdrawal in pursuance of it, nor by anything short of definite location, does a railroad company acquire such an interest even in its place lands as to preclude other disposition under later congressional acts or grants. The court said, "the company acquired, by fixing its general route, only an inchoate right to the odd numbered sections granted by Congress, and no right attached to any specific section until the road was definitely located, and the map thereof filed and accepted. Until such definite location, it was competent for Congress to dispose of the public lands on the general route of the road as it saw proper."

So in *Menotti vs. Dillon*, 167 U. S., 703, under an Act providing "that in all cases where the State of California has heretofore made selections of any portion of the *public domain* in part satisfaction of any grant made to said State, by any Act of Congress, and has disposed of the same to purchasers in good faith under her laws, the lands so selected shall be, and hereby are, confirmed to said State," it was held that selections by the State of lands which had been previously withdrawn, for the benefit of a railroad company, which had filed its map of *general* route, were selections from the "*public domain*" within the meaning of the above quoted act, and passed as such to the State of California, under the provisions of said Act notwithstanding such withdrawal.

The Court said: "No exception is made of lands which at the date of the passage of the Act were withdrawn from pre-emption, private entry and sale, pursuant to the filing by the railroad company of its map of *general* route, and the court should not construe the Act as excluding lands in that condition, unless it is prepared to hold that Congress had no power to confirm to the State, lands which at the time, were simply withdrawn from pre-emption, private entry or sale, for railroad purposes. We cannot so adjudge. The withdrawal of January 30th, 1865, did not in our judgment stand in the way of the passage of such an Act as that of 1866; first, because the Acts of 1862 and 1864, by necessary implication recognize the right of Congress to dispose of the odd numbered sections, or any of them, within certain limitations, on each side of the road at any time prior to the definite location of the line of the railroad; second, Congress reserved the power to alter, amend or repeal each act; third, the filing of the map of general route gave the railroad company no claim to any specific lands, within the exterior limits of such route, on either side of the road, the rule being that a grant of public lands in aid of the construction of a railroad, is, until its route is established, in the nature of a float, and title does not attach to specific sections, until they are identified by an accepted map of definite location of the line of road to be constructed. The railroad company accepted the grant, subject to the possibility that Congress might in its discretion, and prior to the definite location of its line, sell, reserve, or dispose of, enumerated sections for other purposes than those originally contemplated."

The same principle was involved in the recent cases of U. S. vs. Oregon etc., R. R. Co., 176 U. S., 28, and Wilcox vs. Eastern Oregon Co., 176 U. S., 51. For the purposes of those decisions it appears to have been assumed by the court, as it had been by Mr. Justice Field in the earlier cases of Buttz vs. N. P. R. R. Co., 119 U. S., 55, and St. Paul etc., Co. vs. N. P. Co., 139 U. S., 1, 18, that upon the filing by the Northern Pacific Company of a map of its general route "the law withdraws from sale or pre-emption the odd sections to the extent of forty miles on each side."

Upon this point, in the case last cited, the court, (pp. 17 and 18) expressed itself as follows:

> "The Northern Pacific act directed that the President should cause the lands to be surveyed forty miles in width on both sides of the entire line of the road, after the general route should be fixed, and as fast as might be required by the construction of the road, and provided that the odd sections of land granted should not be liable to sale, entry or preemption before or after they were surveyed, except by the company. They were therefore excepted by that legislation from grants, independently of the withdrawal by the Secretary of the Interior. His action in formally announcing their withdrawal was only giving publicity to what *the law itself declared.*"

In the Oregon cases the court modified the assumption of Mr. Justice Field, only to the extent of denying that the effect of the legislative withdrawal was to shield the withdrawn lands from the operation of subsequent legislative grants, (176 U. S., at p. 44). The significance of the Oregon cases in this connection, is therefore not impaired by the more recent determination in Nelson vs. Northern Pacific R. Co., 23 Sup. Ct. Rep., 302, that upon a correct construction of the Northern Pacific Act there was no legislative withdrawal upon location of general route. Indeed, in the Nelson case, both the court in its opinion, and the dissenting justices in theirs, took occasion to reiterate the doctrine of the Sanders, Menotti and Oregon Co. cases, that through nothing short of a definite location will the rights of the railroad company so attach to a tract of land as to shield it from the operation of subsequent legislative grants.

So, in the earlier case of *Kansas Pac. R. R. Co. vs. Atchison, etc., Co.*, 112 U. S., 414, it was held that lands passed to Kansas Pac. Co. under an Act of July 2nd, 1864, although they had been withdrawn by order of the department in March, 1863, for the benefit of a grant to the Atchinson Co., and as lying along its "*probable lines.*" The court said: "The order of withdrawal of lands along the '*probable lines*' of the defendant's road, made on March 19th, 1863, by the Commissioner of the General Land Office, affected no rights which without it would have been acquired to the lands, nor in any respect controlled the subsequent grant." (p. 422).

It is true that some significance was accorded by the court to the circumstance that in that case the later

Act of 1864, was in the nature of an amendment to an Act of 1862, which last named Act antedated the Departmental withdrawal. The question, however, was purely one of congressional intent; a question upon which the relative equities of the two roads and the intrinsic reasonableness of granting lands to one company, which had been withdrawn for the benefit of another prior to definite location, were considerations manifestly more cogent than any technical inferences to be drawn from the mere form of the Act. The real principle of the decision undoubtedly is, that a withdrawal anterior to definite location is without effect on subsequent grants.

The cases in which withdrawals of land for the benefit of railroad companies, have been held to exempt the land from the operation of subsequent legislative dispositions of public domain, are all instances of withdrawal upon definite location.

Thus in *N. P. R. Co. vs. Musser-Sauntry Co.*, 168 U. S., 604, it is held that lands lying within the indemnity limits of the C. St. P., M. & O. Ry. Co., and withdrawn for its benefit by order of the department, in pursuance of a map of definite location of that road, where thereby so segregated from the public domain as not to pass under a subsequent grant to the Northern Pacific Co.

Of the three cases cited by the court in its opinion, as holding that such is the effect of a withdrawal as against subsequent railroad grants, the third, *Spencer vs. McDougall*, 159 U. S., 62, involved only the question of the effect of a withdrawal as against a subsequent pre-emption entry, no subsequent legislative disposition being involved.

In the other two cases, *St. Paul & Pac. R. Co. vs. N. P. R. Co.,* 139 U. S., 1, and *Wis. Cent. R. Co. vs. Forsythe*, 159 U. S., 46, the withdrawals, like that in the Sauntry case, were based upon definite locations. See 139 U. S., 17; 159 U. S., 49.

The same was true in *Lake Sup. Co. vs. Cunningham*, 159 U. S., 354, 373, 375, where, as in the Sauntry case, definite location was emphasized as the basis of the decision.

There are to be found in the decisions of this court, a few general statements to the effect that only those lands are a part of the public domain within the meaning of railroad land grant acts, which are open to entry under the general land laws. Expressions of this kind, while not objectionable when read in connection with the particular circumstances inducing them, are misleading when severed from those connections. In every instance where such expressions occur, the withdrawal in question will be found to have been made for the protection of what *might prove to have become an actually vested right to the specific tracts withdrawn.* Between withdrawals of that character, and those which, without any assumption of a possibly vested right to the specific parcels withdrawn, are made merely as a matter of accommodation, in order that the rights of the party in whose interest the withdrawal is made, *may have opportunity to attach* to the withdrawn lands, the distinction is fundamental. The presumption is, that in its subsequent dispositions of the public domain, it is the intention of Congress to respect withdrawals of the former class, and to ignore those of the latter class. This unquestionably, is the distinction which underlies and justifies the above mentioned and well established judical discrimination between withdrawals on definite location ,and those made upon maps of general route. For upon the definite location of any railroad having a grant of place and indemnity lands, it becomes a matter of uncertainty whether all of the then available lands within the indemnity limits, may not be necessary to supply the deficiency of place lands. If such should ultimately prove to have been the fact, then in a very true, although not absolute or unqualified sense, the railroad company may be said to have had, from the date of definite location a vested right to all of the public lands within the indemnity limits.

St. P. etc., Co. vs. N. P. R. R. Co., 139
U. S., 1, 18, 19.

For the purposes in hand, it seems not very material that under such circumstances the right of the railroad company to tracts of indemnity land must, in the absence of a withdrawal, be regarded, during the period of uncertainty, as subject to defeat or divestment through entries of the land by third parties. It remains true that upon definite location in such a case, the railroad company had a right to all the public lands within its indemnity limits, which would undoubtedly and properly have been respected as a vested right if all of the facts could then have been known. The decision in N. P. R. Co. vs. Musser-Sauntry Co., 168 U. S., 604, and similar cases, import simply, that in the judgment of this court a withdrawal of indemnity lands after definite location, is for some such reasons as those above suggested, to be regarded as having been made for the protection of a possibly vested right.

But with respect to a withdrawal even of place lands upon location of general route only, the situation is different. Such a location imposes no restraint upon the ultimate adoption of any route which might originally have been selected. The route may at the option of the company be so shifted as to affect few, if any, of the lands indicated by the general location. While it is true that it may turn out, upon definite location and construction, that some of the lands covered by a general route withdrawal, ultimately inure to the company, with the title relating back to the date of the grant, it is none the less true that the mere location of the general route cannot in any possible contingency, operate to presently invest the company with an interest in the specific parcels of lands, which according to the indications of the general location, are likely to fall within the limits of the grant. A withdrawal of such lands is not for the protection of any interest which it is supposed may have already actually vested in the specific parcels withdrawn, but is a mere matter of gratuitous accommodation, in anticipation that the interests of the company may ultimately attach to such lands. It is therefore, not an appropriate or sufficient ground for impairing or intercepting the operation of later legislative grants.

In order to show how deeply rooted this distinction is in the law, and how consistently it has been applied in the cases, we add the following review of all the other decisions of this court bearing upon the extent to which lands are segregated from the public domain by either legislative or departmental withdrawals.

To the general doctrine that land to which there has attached either a vested private right or a permanent public use, is thereby segregated from the mass of lands held by the government for distribution through grants and entries, there is another which stands toward it somewhat in the relation of a corollary, to-wit: that where it is a matter of *doubt* whether as to a given tract of land, such a private right or public use has *actually attached*, it is appropriate that the land, the status of which is in doubt, should be withdrawn until the true status of the tract can be authoritatively determined. Within this class fall the cases of *Newhall vs Sanger*, 92 U. S., 761, 764, 765; *Doolan vs. Carr;* 125 U. S., 618, and *Cameron vs. U. S.*, 148 U. S., 301, which determine only that the tenor of legislation upon the subject was such as to evince an intention on the part of Congress to segregate from the public domain and from the operation of public land laws and grants, all lands claimed by virtue of grants made by the Mexican government, until such claims had been adjudicated in the manner provided by Congress; and that as a consequence, lands so claimed under a Mexican grant and still *sub judice* at the date of an alleged grant or entry thereof, were not to be deemed at such date and under such circumstances open to disposition as a part of the public domain.

To the same class belong such cases as *Pac. Ry. Co. vs. Dunmeyer*, 113 U. S., 629; *Soo City, etc. Co., vs. Griffey*, 143 U. S., 82; *Hastings, etc., R. R. Co. vs. Whitney*, 132 U. S., 357; *Bardon vs. N. P. R. R. Co.*, 145 U. S., 535, and *Whitney vs. Taylor*, 158 U. S., 85, which merely apply the rules, that a railroad grant will not carry land upon which at the date of the railroad grant, a pre-emptioner appears by the public records to have acquired rights; and that inasmuch as a grant *in praesenti* should be construed as having reference only to lands over which the government has presently a power of disposition, (146 U. S., 594), it will not carry lands appropriated at the date of the grant, even though they may afterwards fall back into the public domain. For the purposes of the former of these rules, it is not material whether the existing filing, claim or entry, is valid or invalid; it being enough that its validity is by the department either recognized or *sub judice*, since in such a case the government must keep itself in position to recognize and respect the right which is claimed to have become vested, if it should ultimately be found entitled to prevail.

The rationale of this rule in its relation to private rights undoubtedly is, as has been repeatedly declared by the courts, that sound public policy requires the government to deal directly, and unimpeded by extraneous influences, with persons claiming to have acquired vested rights in the public domain, and not to raise up an army of interlopers to come in between the government and the claimants of its lands.

In *Wolcott vs. Des Moines Co.*, 5 Wal., 681, and *Williams vs. Baker*, 17 Wal., 144, there had been granted to the State of Iowa, to aid in the improvement of the Des Moines River, the alternate sections in a strip five miles in width on either side of the river. The act was in terms of present grant with express provision that the lands should become the property of the State upon her admission into the Union, which was to occur in the immediate future, (23 How., 84). A doubt having arisen as to whether the grant should extend along the full length of the river from the south to the north boundary of the State, or only as far north as the mouth of Racoon Fork, the lands throughout the entire length of the grant as claimed by the State were, by departmental order, reserved from sale, to abide the final determination of the controversy. It was held that the lands thus withdrawn were "reserved to the United States by competent authority" within the meaning of provisos contained in subsequent railroad land grants, and were therefore not affected by such grants. *It will be observed that in this case the claim of the State was that it had actually become the owner of these lands,* and the principle of the decision is that, where a withdrawal is made for the protection of an alleged vested right which, if valid, will be good against the world, the withdrawal is to be deemed a reservation from all forms of disposition, whether legislative or otherwise.

To the same effect substantially is the decision in *Wolsey vs. Chapman*, 101 U. S., 755, in which the withdrawal or reservation of lands under the Des Moines River improvement grant was held to protect the withdrawn lands from selection under a prior floating grant to the State for purposes of internal improvement.

It no doubt follows from the doctrine of the foregoing cases that when a railroad company, to whom lands have been granted *in praesenti*, claims to have acquired a vested right to specific parcels of land as lying within the primary or *place limits* of its grant as determined by a definite location of its road, a withdrawal of such lands may properly be ordered by the Department, and that a withdrawal so ordered will operate to segregate the lands from the public domain, even though the alleged definite location, by reason of irregularities, would have been ineffectual for that purpose, or even through the withdrawal through error either of law or fact is made to include lands to which the company was not actually entitled.

In such a case as in some of those herein before cited, it would be enough that the department in the exercise of its judgment had withdrawn the lands to safeguard a claim made in good faith to an actually vested interest in the lands; and in the absence of clear evidences of a contrary intent, no later legislative grant would operate upon such lands, since it would be unreasonable to suppose an intention on the part of Congress to depart from the traditional policy of the government to refrain from disposing under any circumstances or by any form of entry or grant, of lands to which a definitely vested right is claimed to have already attached.

So far as pre-emption and homestead entries, etc., are concerned, there seems to be no limit to the power or discretion of the department to suspend such entries in any particular land district, or to withdraw lands from such entry. Hence, when an order of that kind is made, it is unnecessary to inquire whether made upon general location or definite location or merely in anticipation of the passage of a land grant act, or indeed whether there is any adequate reason for the withdrawal. The power of the department seems to be absolute and unqualified in the premises.

It was only as against such homestead or preemption entries that the withdrawals were held operative in *Bullard vs. Des Moines R. R. Co.*, 122 U. S., 167, and *Hamblin vs. Western Land Co.*, 147 U. S., 531, and *Spencer vs. McDougall*, 159 U. S., 62.

The Bullard case was another of the cases arising under the Des Moines River improvement grant. The claim of the State that the grant extended over the full length of the State from north to south had received Departmental recognition for many years. Large sums of money had been spent by contractors for improvement in reliance upon it, and large quantities of the disputed lands had passed into the hands of purchasers for value and in good faith.

Under these circumstances the Department determined to continue its withdrawal of the lands, even after the claim of the State had been adversely adjudged, in order, "to afford time for Congress to consider, upon memorial or otherwise, the case of actual *bona fide* settlers holding under titles from the State, and to make such provision for confirmation or adjustment of the claims of such settlers as may appear to be right and proper."

These equities, which it was supposed by the Department that Congress would desire to recognize, were afterwards given effect by legislation declaring the grant operative to the full extent claimed by the State. It was held in this case that, while the withdrawal was continued in order to permit the recognition of these equities, the land was not subject to preemption entry. Whether a withdrawal made in aid of equities of this attenuated character would suffice to withdraw the lands from later legislative grants was not determined, and would undoubtedly be a question of considerable delicacy.

In the Hamblin case above cited, the point determined was simply that where lands had been withdrawn by order of the department as lying within the place limits of a road whose maps of definite location had been in fact accepted by the land department, the land thereby became inaccessible to homestead entry, even though the Department had acted erroneously in approving the definite location.

The case of *Spencer vs. McDougall*, 159 U. S., 62, is of the same character; the only point determined by it is that a withdrawal of all the lands in a given land district, for the benefit of a railroad grant, before any location of the road either general or definite, is effective to prevent subsequent *pre-emption* entries. So, in *Wood vs. Beach*, 156 U. S., 548, except that the withdrawal was on definite location.

Upon the whole therefore, the following propositions appear to be well grounded in reason and in the decisions of this court:

(a). That a withdrawal either legislative or departmental, while operating to preclude private entries may be inoperative as against subsequent legislative grants.

(b). That only those withdrawals are effective as against subsequent legislative grants, which are made for the protection of possibly vested rights.

(c). That the last mentioned class of withdrawals includes those made upon definite location, but does not include those made upon location of general route.

It is argued by defendants that for the purposes in hand there are two types of granting acts, and that although our conclusions may be tenable where the prior grant is in terms like those of the Northern Pacific act, it is otherwise where the prior act is in the terms of the grant to the Lake Superior and Mississippi road. The unsoundness of the attempted distinction is manifested by a comparison of the two acts. The difference between the two acts is one of form and not of substance.

By the terms of the Northern Pacific granting act, the grant was of "every alternate section of public land not mineral, designated by odd numbers," etc., "and whenever on the line thereof the United States have full title not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office."

In the L. S. & M. granting act, which in the case at bar, was the first of the competitive acts, the grant was of "every alternate section of public lands of the United States not mineral, designated by odd numbers, to the amount of five alternate sections per mile on each side of said railroad on the line thereof within the State of Minnesota; but in case it shall appear that the United States have, when the line or route of said road is definitely fixed, sold, appropriated, reserved, or otherwise disposed of, any sections, or any part thereof, granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, then it shall be the duty of the Secretary of the Interior to select from the lands of the United States, nearest to the lines of sections above specified, in alternate sections or parts thereof, so much public land of the United States not mineral as shall be equal," etc.

For the purposes in hand these two sections are equivalents. By each section two things are made equally clear:

(a). That no lands were to pass which, prior to definite location, had been otherwise appropriated or disposed of.

(b). That the government's power of disposition over these lands was not to be cut off by the mere passage of this granting act.

Finally, it would seem that the attempted withdrawal of the Lake Superior & Mississippi lands upon the filing by that company of the map of its general route, was invalidated by the same implications which under the Northern Pacific grant were in Hewitt vs. Schultz, 180 U. S., 139, held to prohibit the withdrawal of Northern Pacific indemnity lands prior to definite location. The provision of the Lake Superior & Mississippi grant seems as clearly as the corresponding clause of the Northern Pacific grant, to contemplate that until the road shall be definitely located the lands shall remain open to settlement. It is as follows:

> "Sec. 3. And be it further enacted *that when the said road shall be definitely located* and a plat thereof filed with the Secretary of the Interior, the lands hereby granted shall not thereafter be subject to settlement, preemption or private entry, adverse to this grant."

(6.)—The Railroad Company is not chargeable with Lands which it has Relinquished to the Government.

It is shown by the defendants that from time to time considerable quantities of land had been selected by the Northern Pacific Company, and afterwards released to the Government. It is argued that all these lands should be charged up against the Company as though they had actually inured to it, and with no credit allowed on account of the relinquishments. No attempt was made by the witness who in this regard examined the records for the defense, to ascertain or show for what reason or reasons, if any, these relinquishments were made (p. 240). The defendants subsequently introduced these relinquishments in evidence as Exhibits P to V, both inclusive. Several of them indicate upon their face what might have been anticipated to be the fact, that the relinquishments were made on account of conflict with other claims upon the land. It is only fair to presume that in many instances the relinquishments were made at the instance of the Government. In others, they appear to have been made from legal necessity. In still others, doubtless to avoid conflict with settlers, even where the company might have successfully maintained their selection. Exhibit Q, for example, is a list of some seventeen thousand acres of lands which had been selected by the railroad company, but which afterwards proved to be swamp lands, and which had been patented by the Government as such.

In many cases the relinquishment lists do not disclose upon what ground, if any, they were made, but this certainly is no proof of the absence of reasonable grounds. Again the sufficiency of the grounds for relinquishments, if any grounds were necessary, would seem to be a matter concerning only the company on the one part and the government on the other, and it appears that all these relinquishmetns have been duly accepted by the Government and duly entered upon the tract books in the General Land Office. This in itself should raise a presumption that the relinquishments were properly and reasonably made, and no one, as we suppose, will argue that it was understood either by the company or by the Department that these lands were being returned to the government as a gratuity, or with any other idea than that other lands should be selected in lieu of them. There is nothing to indicate that the Government has ever taken with respect to these relinquishments the extremely unjust and irrational position which these strangers to the transaction now urge upon the court.

(E.)—Defendants' Criticisms upon the form of the Selection Lists. Of these there are only Two.

It is claimed that the lists should have had attached to them the affidavit contemplated by the circular of August 4th, 1885, to the effect that the specific losses for which indemnity was claimed were truly set forth and described in the lists and that the losses had not theretofore been indemnified.

(See Defendants' Exhibit N, p. 764).

But no such affidavit was required at the time when our selections were made. It is assumed by the defendants that the regulations with respect to the selection of railroad indemnity lands introduced by plaintiffs as Exhibit 65, p. 541, did not go into effect until December 1st, 1883. This is a misapprehension, as it is certified in the third line of the Exhibit that the regulations embodied therein were in force June 30th, 1883, and that they embodied in substance the original regulations of 1879 with the slight modifications of the intervening years. The notation at the head of the Exhibit "in effect December 1st, 1883," does not import that the regulations took effect on that date, but simply that they remained in force and unchanged down to that date. (See the first paragraph of the introductory preface to the volume of public documents from which this Exhibit was taken).

That these are the regulations which were in force when the Northern Pacific selection lists of 1883 were filed, the court will also take judicial notice. No such affidavit as that called for by the subsequent circular of 1885, was then required.

It is error again to suppose that the circular of 1885, (pp. 763-4), contemplated the attachment of the affidavit therein provided for, to any selection lists *previously* made by any railroad company. By reference to that circular it will be noticed that when selection lists had been previously filed without specification of losses, it is required only that the companies shall "designate the deficiencies" for which the indemnity was claimed "before further selections are allowed."

The affidavit referred to in the circular, has reference only to selecting agents "applying to *make indemnity selections:*" and the affidavit is required to be "attached to the list;"—evidently meaning the selection list, and having reference only to selection lists thereafter filed.

There remain several other answers to this objection.

(a). All of the Northern Pacific selection lists were many years ago (from 8 to 18 years) accepted, approved and allowed by the local land officers. (p. 332 of Record). We have shown by independent proofs heretofore cited in this brief, that none of the losses relied upon in these Northern Pacific lists had ever before been used as bases for indemnity selections. We have thus shown the existence in fact, of the one circumstance of which the affidavit in question was designed to constitute formal proofs. Under these circumstances even if there had been a failure to annex an affidavit of this sort to an original selection list, made at a time when such an affidavit was required by the regulations, its absence ought not to be regarded as fatal to the selection.

(b). However this might be, it would still remain obviously true that the Northern Pacific Company having filed in 1883 selection lists conforming in all respects to the regulations then in force, and having thereby acquired a vested right to the lands selected, that right thus vested would not be subsequently lost or forfeited, on account of any failure to furnish supplementary certifications called for by the department. A noticeable feature of the circular of 1885 is the care with which the department refrains from any attempt to invalidate or control selections previously made without designation of losses. Although the department was desirous to secure supplementary designations of losses in such cases, it claimed no authority and made no attempt to undermine or reject such previous selections for failure to supply a designation of losses. The sole leverage which it brought to bear upon the companies, to secure such supplementary designations of losses, was to instruct the local land officers not to pass upon or approve any *new* or *additional* selections, until losses for prior selections should have been designated. (pp. 763-4).

O'Brien vs. N. P. R. R. Co., 22 L. D., 135, 137.

St. P., M. & M. Ry. Co. vs. Lambeck, 22 L. D., 204.

LaBar vs. N. P. Ry., 17 L. D., 406.

(e). Finally, it is to be observed that this objection has no possible application to the first indemnity selections made by list No. 10, since the designation of losses under that list, made in 1887, had attached to it, the affidavit required by the circular of 1885, (Record p. 345); and that it has no bearing upon the lands described in list No. 15 because that list, as originally filed in 1883, had, in bulk, designated the losses relied upon, and the circular of 1885 had retrospective application only "where indemnity selections have heretofore been made without specification of losses." (Record p. 764).

(2). It is claimed by defendants that the selection lists were also formally defective in not designating, tract for tract, the lost lands in lieu of which the selections were made.

The designation of losses in any form, by the Northern Pacific Company was dispensed with by the regulation of Secretary Teller of May 28, 1883. (p. 185 of Record). The Secretary addressing the Commissioner of the General Land Office under that date, said:

> "In order to facilitate the work of making selections, I think you should instruct the local officers that, when clear lists of selections, free from conflict or other objection, are filed with the district officers and approved by them, said selections should at once be marked upon their books and forwarded for final examination, leaving the ascertainment of the lands lost in place to your office, instead of requiring preliminary lists of such lost lands, together with the indemnity lands, tract for tract, from the company as heretofore.
>
> "I am satisfied that the work of adjusting the grant will go forward much more rapidly under this plan than under the former practice."

Hence, in filing the selection lists here in controversy, to-wit, lists 10, 15 and 16, in October of that year, the company designated no losses except with reference to the lands selected by list 15. The lands described in that list were selected from the second indemnity limits, and the losses underlying them were designated in bulk upon the supposition that there might be special reasons for the designation of second indemnity losses. (pp. 325, 368, 406 of Record). Promptly, in compliance with subsequent requirements of the Department, the company afterwards made further designations of losses as follows: October 10th, 1887, losses were designated in bulk for the selections covered by list 10, and July 19th, 1891, those losses were rearranged, tract for tract; April 11th, 1893, losses were designated, tract for tract, for lands selected by lists 15 and 16. Yet in the face of these uncontroverted facts the company is claimed, by the defendants, to be in default for not complying with a regulation of October 14th, 1893, requiring railroad companies to designate losses, tract for tract, as had already been done by this company two years before.

It is argued by defendants that the regulation of Secretary Teller, dispensing with the specification of losses by the Northern Pacific Company, had reference only to lands that had been withdrawn from entry for the benefit of that company. While the regulation appears to have been induced by the fact that withdrawals had been made, and from time to time would be made, of the lands within the indemnity limits of the company, it discloses no intention to discriminate between those lands which had been, and those which had not been, withdrawn at the date of the regulation; or to restrict the regulation to withdrawn lands at any time. And even though lands could be exempted from the force of the regulation by proof that they had never been withdrawn, the burden would be upon the claimant of such exemption, to furnish such proof. Moreover, as we have already shown the Northern Pacific Company, many years before the inception of any of the claims of defendants, had fully complied with all Departmental regulations respecting the designation of losses, even if the dispensation of Secretary Teller were to be entirely ignored.

(F.)—Non-Observance of Alleged Limitations upon the Right of Selection.

The defendants set up three alleged limitations upon the right of selection which confessedly the company has never attempted to observe.

(1.)—Selections need not be made upon the side of the road where the losses occurred.

There is no claim that the Department of the Interior has ever sought to enforce any such limitation under the influence of any one of the manifold vicissitudes which have imparted instability to the doctrines of that department. So far as appears, there has never been either a Commissioner of the General Land Office, or a Secretary of the Interior who has asserted any such restriction upon the Company's right of selection. On the contrary, in the case of Atlantic & Pac. R. R. Co., 17 L. D., 313, a list of lands not otherwise objectionable, was directed to be approved where the losses were on the north side of the road, and the indemnity selected on the south. Such, it is confidently submitted, has always been the practice of the department. This is sufficiently indicated by the fact that in the selection of indemnity lands no designation of the underlying losses was ever required until the circular of November 7th, 1879, at which time the rule was introduced on account of the apparent holding in Leavenworth, etc., R. R. Co. vs. U. S., 93 U. S., 733, to the effect that except in grants of quantity, indemnity could only be allowed for lands sold, reserved, etc., after the granting act, and prior to definite location. (p. 547).

The successive general circulars on the selection of indemnity lands are those of January 24th, 1867 (2 Lester's L. L., 362), October 15th, 1873, (1 Copp's Land Owner, 70), and November 7th, 1879, (6 Copp's Land Owner, 141).

This circumstance is decisive that at the date of the circular of 1879, the department was a stranger as well to the claim that lands must be selected upon the same side of the road upon which the losses had occurred, as to the claim that they must be selected from the lands nearest to those lost. At that time the only reason known to the department for looking into the particular losses, as respects either their location or their date, was the supposed necessity of determining under some grants whether the losses occurred before or after the date of the granting act. (p. 547).

The argument of counsel is derived entirely from a construction placed upon the very differently worded grant to the Burlington and Missouri River R. R. Company. That was a grant *sui generis*. It provided for a grant of ten alternate sections per mile on each side of the road, of lands not sold, reserved, etc., at the time of definite location, without distinguishing between place and indemnity lands and without imposing any lateral limitations upon either.

The decision in the Burlington case (4 Dil., 297, and 98 U. S., 334), was due not to the existence of any principle of reason or justice or public policy, which should preclude the company from seeking on one side of its line indemnity for losses on the other, but to the simple fact that the peculiar wording of that act was inadequate to justify a broader or different construction. The indemnity clause of the Northern Pacific grant, and of the railroad grants generally, is productive of an entirely different result. That clause treats the belt of granted lands as an entirety and provides generally that in case of a loss of any of the granted sections, indemnity lands may be selected from the odd numbered sections within ten miles beyond the original limits, without any limitation as to the side of the road upon which the losses were suffered, or upon which the selections are made. The language of the indemnity clause is as follows:

> "And whenever, prior to said time, any of said sections or parts 'of sections shall have been granted, sold, reserved,' occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections."

The natural force of this provision is to authorize selections within the indemnity limits for lands lost, without reference to the side of the road upon which the loss occurred. No principle of public policy or of fair dealing suggests a departure from this natural meaning of the clause. No such clause occurred in the Burlington act upon the construction of which counsel rely.

(2.)—Not Necessary to Select the Lands Nearest Those Lost.

It is next objected that it is a prerequisite to the validity of Northern Pacific selections, that they should appear to have been made from the lands nearest the lands lost. Not only is the Northern Pacific granting act destitute of any provision giving the slightest color to such a claim, (that act differing significantly in this respect from other land grant acts, which expressly require the selection of the lands nearest to those lost), but the first trace in either the regulations or decisions of the department of any attempt to enforce such a restriction upon railroad companies not subjected to it by the terms of their granting act, is found in the circular of August 4th, 1885, introduced as defendants' Exhibit N, and found on p. 763 of Record. That this was the earliest attempt of the department to enforce such a restriction, is indicated in the decision of Secretary Smith in case of N. P. R. R. Co., 20 L. D., 187, 189. This was two years after all the lands involved in this controversy had been selected.

These selections therefore cannot be affected by it. The question is: Did these selections comply with the directions and regulations of the Secretary in force when they were made in October, 1883? Confessedly they did. The right of the Railroad Company thereby became vested.

Moreover it must not be forgotten that the Northern Pacific Railroad Company selected these lands under Secretary Teller's circular of May 28th, 1883, (p. 185), whereby the company were expressly authorized to make selections without designation of particular losses, "leaving the ascertainment of the lands lost in place to the General Land Office." If the doctrine of securing the lands nearest to the lost tracts had before that date ever been heard of in the Department (which as hereinbefore shown it had not been), this circular would have effectually displaced it, so far as these selections were concerned. *The import of this circular manifestly was that the Company was authorized to select lands to the extent of their losses without any reference whatever to the particular location of the lost tracts.* It is utterly irreconcilable with any such theory as was years afterwards invented by the Department and is now insisted upon by counsel.

A third reason why these selections of the Northern Pacific Company were not affected by this belated rule of the Department is that it is not in the nature of a regulation of the Company's selections, but is an infringement of the Company's rights as in terms defined by the granting act. By the terms of that act the indemnity lands were to be "selected" by said Company. These words import a right of choice on the part of the company and, as already noticed, this natural force of the expression is augmented and emphasized by the significant omission from this act of the express requirement that the lands nearest to the lost tracts should be selected, which was embodied by Congress in several of its land grant acts, both prior and subsequent to 1864. The company were limited by the terms of the granting act to belts of a prescribed number of miles; the lands which they would be able to find in the indemnity limits would presumptively be in any event immensely less valuable than the choice lands which early settlers had culled out of the place limits, and it was undoubtedly the intention of Congress that witihn the indemnity limits the company should have the right of selection in fact as well as in name. The belated rule of the Department is merely an attempt to engraft upon the law after the construction of the road had been secured, a limitation which manifestly was never contemplated by Congress.

(3.)—Not Necessary to Exhaust First Indemnity Lands along Entire Line before Selecting from Second Limits.

It is argued on behalf of defendants that no lands can be selected from the second indemnity limits until the lands within the first indemnity limits along the entire line of the road from Lake Superior to Puget Sound are shown to have been exhausted.

This contention is flatly contradictory to the terms of the joint resolution of May 31st, 1870, whereby the second indemnity limits were established. If the first three lines of that resolution had been framed with the specific intention to make any such claim impossible, they could not have been more efficiently worded than they are. The resolution means precisely what it says, to-wit, that the right to second indemnity lands shall arise whenever at the time of the final location of the road there is not in any state or territory, within the limits prescribed by the company's charter, the amount of lands per mile granted by Congress to the company. The following is the material portion of the joint resolution:

> "And in the event of there not being in any state or territory in which said main line or branch line may be located, at the time of the final location thereof, the amount of lands per mile granted by Congress to said company, within the limits prescribed by its charter, then said company shall be entitled, under the directions of the Secretary of the Interior, to receive so many sections of land belonging to the United States, and designated by odd numbers, in such state or territory, within ten miles on each side of said road beyond the limits prescribed in said charter, as will make up such deficiency on said main line or branch except mineral and other lands as excepted in the charter of said company of eighteen hundred and sixty-four, to the amount of lands that have been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of subsequent to the passage of the act of July two, eighteen hundred and sixty-four."

NINTH POINT.

All the Foregoing Questions of Fact Respecting the Railroad Company's Selections, the Courts will decide, since the Department of the Interior has Abdicated its Functions in that Connection by allowing the Entries of the Defendants without considering those Questions of Fact.

Counsel for defendants cite a long list of cases ostensibly in support of the claim that we are not entitled to correct the legal error into which the Secretary of the Interior fell to the prejudice of our rights, because, forsooth, he has not decided and will not decide certain questions of fact having a bearing upon the validity of the railroad selections. There is not one case in the entire list having the slightest tendency to support the learned counsel in his untenable position. They are all cases in which the Department had actually decided disputed questions of fact, and in which the attempt was made to secure a judicial review of such decisions.

There is a single circumstance which affords all the refutation which this claim of the learned counsel requires. It is acknowledged law that if the Department is induced by legal error to pursue a course which has made it impracticable for the person having prior claim upon a tract of public land, to perform the acts legally necessary to the perfection of his right and to earning of the title, he can enforce his right to the land without showing the performance of such acts. Thus in Bisson vs. Curry, 35 Iowa, 72, the court upon this ground enforced the equitable right of a preemptor who had neither filed his declaratory statement, made his final proofs, nor paid for the land; in Cunningham vs. Ashley, 14 How., 377, a similar claim was enforced although confessedly no proofs had been made before the land officers. In Lytle vs. Arkansas, 9 How., 328, similar relief was given to one who had never paid the Government for the land; in Duluth & Iron Range R. R. Co. vs. Roy, 173 U. S., 587, and in Ard vs. Brandon, 156 U. S., 537, the like relief was given to a homesteader who had been unable to so much as get his application on file, on account of a departmental error of law.

Now, if as these cases abundantly establish, a party is excused from performing the acts which the law prescribes as prerequisites to his title, where non-performance is made impracticable by the Department's mistake of law, a fortiori, must he be excused from producing a departmental finding of fact where acting under error of law the Department refuses to make such finding.

If the Department's error of law is cogent enough to dispense with the very existence of the facts which would ordinarily be prerequisites to the plaintiff's title, it must be cogent enough to dispense with the mere proofs of such facts in a particular tribunal. In none of the cases above cited had the Department passed upon the questions of fact, whether the aggrieved plaintiff had done or offered to do, or had been prevented from doing, the things necessary to the inception or maturity of his title. In each case, however, all these were questions of fact which would have been for departmental determination exclusively, except for the error of law. To each of those plaintiffs relief could have been denied upon the ground that the Department had never passed upon the questions of fact relating to the inception or maturity of the plaintiff's title, with just as much force as it can be denied to us, upon the ground that the Department has never passed upon the regularity of the railroad selections or upon the existence of the deficiency authorizing them.

The contention of counsel at this point is precisely that which was overruled in Duluth & Iron Range R. R. Co. vs. Roy, 173 U. S., 587, 591, where a homestead claim was supported as against one claiming land under the State as swamp, although no finding had ever been made by the Department upon the question of fact whether the land was swamp or not. Such also is the doctrine of Wright vs. Roseberry, 121 U. S., 498, where the rights of the parties here held unprejudiced by the refusal of the Secretary of the Interior to pass upon the character of lands claimed as swamp. It was held that under such circumstances parol proofs of the character of the lands were admissible. The court say: "A resort to such mode of identification (by parol) would also seem to be permissive where the Secretary declares his inability to certify the lands to the state for any cause other than a consideration of their character."

TENTH POINT.

Complainants have Succeeded to the Interests of the Northern Pacific Railroad Company.

The deeds of the lands from the receivers of the Railroad Company to the Northern Pacific Railway Company, were introduced in evidence as Exhibits 41 and 42, (pp. 459, 468 of Record); the decrees authorizing and confirming the sale, were introduced as Exhibits 39 and 40, (pp. 448, 455 of Record). No objection was made to the introduction of these decrees upon the ground that they should have been accompanied by any of the other files or proceedings in the matter of the receivership, and even if such objection had been made it would have been untenable.

Gardere vs. Col. Ins. Co., 7 Johns, 514, 519.
Jones vs. Randall, Cowp., 17.
Walker vs. Doane, 108 Ill., 236.

All question of their sufficiency is moreover obviated by the introduction of a deed for the lands direct from the Northern Pacific Railroad Company to the Northern Pacific Railway Company. (See Exhibit 43, p. 478).

As ground for denying the sufficiency of this deed, it is claimed that the lands had already passed to the Receivers of the Company. But this is an assumption which strengthens the Receivers' deed just in proportion as it weakens the deed from the one railroad company to the other. If it is assumed that the title to these lands had become vested in the Receivers, certainly nothing more than the decree of the Circuit Court authorizing a sale of them by the Receivers, and confirming their sale and Receivers' deeds made in pursuance thereof, could be necessary to a complete transfer of title. Allowing the defendants to take either horn of the dilemma, the transfer of title to the Northern Pacific Railway Company is clearly established.

It is also objected that there are no proofs of the incorporation of the Northern Pacific Railway Company, through whom our title is derived, or of the power of that corporation to take or hold these lands. But for such collateral purposes as the deraignment of our title from the Northern Pacific Railroad Company, the incorporation and capacity of corporations appearing in the chain of title will be presumed, in the absence of proof to the contrary, very much as under similar circumstances it will be presumed that the grantee in a deed to an individual, is a real person and not a fictitious one. So far as the matter of capacity to take and hold the lands is concerned, it seems to be disposed of by the commonplace principle that even if there were a want of capacity the title would pass by deeds to and from the corporation, subject only to question at the hands of the State.

Myers vs. Croft, 13 Wal., 291.

7 Thompson on Corporations, Par. 8358; and cases cited.

Hager vs. Board of Supervisors, 47 Cal., 222.

1 Clark & Marsh on Corp., sec. 143.

1 Jones Real Prop., sec. 169, 181.

ELEVENTH POINT.

Issuance of the Patents mentioned in Exhibit "A" attached to the Bill is Admitted and is also Proven.

It is said that there are no proofs of the issuance of any of the patents. It is true that only one of them was introduced in evidence (Exhibit 59, p. 535). The issuance of the other patents, the dates of which are specified in Exhibit A, attached to the complaint, is sufficiently admitted by the answers. Although courts of equity still adhere to the inconvenient doctrine that a failure to deny an allegation does not imply an admission of it, there seems to be no doubt that in the absence of a denial of a particular allegation of the bill, clauses in the answer which by a liberal construction can be regarded as an admission of it should be so construed and applied.

In our Exhibit A attached to our bill of complaint, we set forth in detail the date and character of each entry, the name of each entryman, the description of land entered by him, and the date of patent in those cases where patents were known to have issued. In none of the answers is the accuracy of the specifications contained in Exhibit A in any manner questioned or denied, and all the answers are manifestly drawn upon the theory that the interests of the several defendants are as stated in the bill.

The principal answer, that of the defendants Waldo A. Avery et al., bristles from beginning to end with admissions, denials and allegations, respecting "the lands in which these defendants are interested," or "the lands in which these defendants claim an interest," etc., which are practically unintelligible and incapable of application to any particular lands, except upon the theory that Exhibit A, of the complaint, is adopted and referred to by them as indicating the lands in which they are interested.

Repeatedly in paragraphs 7 and 8 of that answer, and in the corresponding paragraphs of the other answers, the several entries and proceedings thereon, referred to in the bill of complaint, as having been made by the defendants, are tacitly assumed and made the basis of various allegations, admissions and denials.

Paragraph 12 of the bill is admitted bodily by all the answers, except as to allegations in its latter half respecting interests acquired by the Northern Pacific Railroad Company. The allegations thus admitted are in effect that except for the vested rights of the Northern Pacific Railroad Company, the several entries and proceedings referred to in Exhibit A attached to the bill, would have been operative to invest the several entrymen with complete equitable title to the lands, and that in the case of each parcel of land described in Exhibit A, the land office receipts or certificates and patents referred to in Exhibit A appear in the records of the Interior Department, and the Local Land Office at Duluth.

All of the defendants also admit that they are claiming and asserting adversely to the plaintiffs all the rights of ownership or otherwise, legal or equitable, with which they purport to have been invested by the several instruments, conveyances or contracts in Exhibit A mentioned, which manifestly includes the patents therein referred to; and that, "in some cases patents were issued thereon for said lands," is expressly alleged in the eighth paragraph of the answer of Avery et al., and in the corresponding clauses of the other answers (58, 76, 95, 125).

We think we have not been at fault in presuming in this state of the pleadings, that there was no necessity for further lumbering up the record by a production of certified copies of the patents.

But the issuance of the patents mentioned in Exhibit "A" attached to the bill, is also established by the transcript from the Tract Books of the Local Land Office at Duluth, introduced as complainants' Exhibit 26, pp. 418-427 of Record.

TWELFTH POINT.

The Rule Against the Maintenance of a Suit to Quiet an Equitable Title, is Not Material here.

(1). If the patents so far as issued have been operative to invest the defendants with the legal title to the patented lands, our suit is not to remove a cloud, but to enforce a trust, so that the rule appealed to would in that view of the case have no application. Neither does the rule referred to prevent us from obtaining relief by way of injunction against the cutting of timber upon any of the lands whether patented or not.

(2). Even regarding the suit as one to remove clouds from our titles, upon the theory that our selections so segregated the land from the public domain that the subsequent entries and patents are void and the legal titles of all the tracts still in the United States, *we are entitled to maintain it in order to avoid a multiplicity of actions.*

In Florida the same view is taken as in the Federal Courts in reference to the right to maintain a suit to remove cloud from title against a party in possession. Yet in *Hughes vs. Hannah*, 22 South,, 613 (Fla.), it was conceded that this principle would give way before the policy of preventing multiplicity of actions. The court's only ground for denying the right to maintain the bill there filed was the necessity for enforcing the narrow rule which was in force in that state at the time of the adoption of the constitution of 1838, with reference to the circumstances under which numerous defendants claiming severally may be joined in order to prevent multiplicity of actions. The court felt constrained to reject the modern and liberal view on this subject supported by Pomery and by the Federal decisions. (See p. 617).

(3). This brings us to the proposition that however it may be with the owner of a legal title, one who has only an equitable title, and who is prevented from getting in from the United States a legal title, by reason of an outstanding patent wrongfully issued to a third party, may resort to equity to have the patent cancelled as a cloud upon his title, in order that he may get in the legal title, which otherwise is inaccessible to him, and this independently of any question of multiplicity of actions. To such a case the reasoning of Justice Gray in *Frost vs. Spitley*, 121 U. S., 552, 556, has no application, since the plaintiff has no other way of getting in the legal title than first to concel in equity outstanding clouds. It was so adjudged in *Van Wyck vs. Knevals*, 106 U. S., 360. A bill was there filed to cancel a patent, and the facts were as follows: By the act of July 23rd, 1866, (14 Stat., 210), Congress made a grant of lands to the State of Kansas for the use and benefit of the St. Joseph & Denver City Railroad Company. The grant to the state was *in praesenti* of the odd numbered sections within specified limits, and the act provided that upon completion of ten mile sections of the road patents should issue from the United States to the *Railroad Company.* The grant contained the usual exceptions of land sold, reserved, and appropriated at the date of definite location. On March 25th, 1870, the Railroad Company filed its map of definite location opposite the land in controversy, which at that date was part of an odd numbered section within the specified limits of the grant and was public land free from adverse claims; the road was constructed in due course. After the definite location, and on April 13th, 1870, Van Wyck entered the land as a homestead and received a patent from the United States. Knevals, who had succeeded to the rights of the Railroad Company, filed his bill to cancel the patent and to compel Van Wyck to convey to him any interest acquired by the patent. The Circuit Court granted the relief prayed, and this court affirmed the decree and held as follows:

(a). That the legal title to the land passed to the State of Kansas on the definite location of the road.

(b). That the title acquired by the Railroad Company and Knevals was an equitable title.

(c). That the patent to Van Wyck was absolutely void and did not convey the legal title, the land having been previously granted.

(d). That Knevals was entitled to equitable relief. The opinion concluded as follows:

> "The existence of the patent, therefore, under these circumstances, furnishes ground for equitable relief. That relief, however, should properly be limited to a decree declaring the equity of the complainant, the invalidity of the title of the defendant, and enjoining him from the assertion of any claim

> to the property under the patent; but inasmuch as no objection is taken to the form of the decree as entered, which requires the defendant to execute a conveyance of the premises to the complainant, and as the execution of such a conveyance, amounting in fact to a release of his claim to the property, will accomplish all that could be legally effected, it is not considered necessary to order a modification of it. The decree is accordingly affirmed."

(4). Beside the ground of prevention of multiplicity of actions, and the ground that if the legal title is in the government we cannot get it in until we have had the patents set aside, there remains another independent ground upon which apparently we are entitled to bring all the adversely claiming parties as defendants into a single suit, viz.; the ground adopted by the Circuit Court of Appeals in 58 Fed., 297, 302.

Judge Thayer there points out that the Federal rule requiring possession by a plaintiff in a suit to remove cloud from title is not recognized in Minnesota, citing to that effect 7 *Minn.*, 167, (110), 8 *Minn.*, 403, (357). These Minnesota cases are directly in point and fully sustain the right of a plaintiff to remove a cloud from title, even as against the defendant in possession. Circuit Court of Appeals held that it was justified in giving the plaintiff the benefiit of this principle of Minnesota law, evidently conceding it salutary and just, and preferring it to the Federal doctrine. This position seems to be entirely tenable, for, if the Minnesota rule upon this matter of remedial right had been differentiated from the Federal rule by statute, the Federal Courts of Equity would undoubtedly have been justified in adopting it into their equitable practice, had they deemed it an improvement.

Clark vs. Smith, 13 Pet., 195.
Parker vs. Overman, 18 How., 137, 139-141.
Fitch vs. Creighton, 24 How., 159.
Stark vs. Stern, 6 Wal., 402, 409-410.
Cummings vs. Nat. Bk., 101 U. S., 153, 157.
Hollen vs. Challen, 110 U. S., 15.
Ex parte McNeil, 13 Wal., 236.
Case of Broderick's will, 21 Wal., 503, 520.

It is pointedly remarked by Bradley, J., in the case last cited that "much of equitable jurisdiction consists of better and more effective remedies for attaining the rights of the parties."

In other words, greater efficiency of remedy is to a large extent of the very substance of the equitable jurisprudence. Nor can any reason be assigned why the Federal Courts should not be as free to enlarge their equipment of these valuable and substantive remedial rights, from the doctrine of the State decisions as from the State statutes.

THIRTEENTH POINT.

Nor is it Material that Some of the Defendants May Be in Possession.

The avoidance of multiplicity of actions is even under such circumstances a sufficient basis of jurisdiction in equity.

DeForest vs. Thompson 40 Fed., 375, 378.
Louisville, etc., Co. vs. Ohio, etc., Co., 57 Fed., 42.
Black vs. Shreeve, 7 N. J. Eq., 440.
1 Pom. Eq., Par. 257; and note 1 on page 274; and see Paragraphs 261 to 265.
Waterworks vs. Youmans, L. R., 2 Ch. App., 11.
N. Y., etc., R. R. Co. vs. Schuyler, 17 N. Y., 592, 599.
N. Y., etc., R. R. Co. vs. Schuyler, 34 N. Y., 30, 44, 46.

The general principle is that whenever at law a great multiplicity of actions would be necessary to attain the same results which in equity may be reached in a single proceeding, the legal remedy is for that reason to be deemed inefficient and inadequate.

11 Encyc. of Law, 2nd. Ed., 201.
Central Pac. R. R. Co. vs. Dyer, 5 Fed. Cases, No. 2552.

Louisville N. A. & C. Ry. Co. vs. Ohio Val. Imp. & Contract Co., 57 Fed., 42.

Potts, Assignee vs. Hahn, 32 Fed., 660.

DeForest vs. Thompson, 40 Fed., 375.

New York Life Ins. Co. vs. Beard, 80 Fed., 66.

This principle would of course have no application in the few jurisdictions such as Montana and California, where by special provision of statute, many individuals occupying separate tracts, may be united as defendants in a single action of ejectment.

FOURTEENTH POINT.

It is Not Material that the Costs of Survey have not yet been Paid by the Railroad Company.

There has been no opportunity afforded to the complainants or their grantor, the Northern Pacific Railway Company, of paying such fees and charges. The survey is made by the United States of odd and even sections together under contracts with surveyors, and it is the uniform practice of the Land Department of the United States when it is prepared to issue patents to the railway company, to furnish a so-called "clear list," with a statement of the survey fees, and until such statement is furnished, the railway company has no means of ascertaining the amount and no opportunity of making payment. The regulations and practice of the Department upon this subject are matters within the court's judicial knowledge.

The cases cited by respondents in this connection indicate merely that the government has a lien upon the lands to secure the cost of survey. In *Deseret Salt Co. vs. Torpey*, 142 *U. S.*, 241-253, it is held, that in the case of place lands, the full legal title passes *in praesenti* to the company without reference to the survey charges; and with reference to the indemnity lands the interests of the government are amply protected by its lien for these charges. The question as to their payment or non-payment concerns only the government and the railroad company or its assigns, and is one in which the defendants have no interest whatever.

FIFTEENTH POINT.

Equity Will Administer Entire Relief.

Equity having acquired jurisdiction in order to remove a cloud from title, to enforce a trust, or to restrain trespass, will retain the case to administer entire relief, and to settle so far as practicable in one suit all matters of controversy between the parties connected with the lands.

It will restore the prevailing party to the possession.

Root vs. Woolworth, 150 U. S., 401, 410.
Coryell vs. Klehm, 41 N. E., 864.
Church, etc., vs. Church, etc., 70 Fed., 179, 183.
Gormley vs. Clark, 134 U. S., 338, 349.
Smyth vs. N. O. Canal Co., 141 U. S. 656, 661.
Hayes vs. Union Co., 53 N. W., Neb., 979.
17 Encyc. of Pl. & Pr., 362.

It will administer relief by way of damages for trespass upon the premises in controversy.

U. S. vs. Gugland. 79 Fed., 21.
Fed. Cases No. 1962.
Brown vs. Solary, 19 Southern Rep. (Fla.), 161.
Semon vs. Freitag, 29 S. W. (Ky.), 320.
Fleischner vs. Citizens Co., 35 Pac. (Or.), 174.

That the damages vary in amount and circumstances in the cases of the different defendants is not material.

1 Pomeroy's Eq. Jur., Sec. 257, note.

SIXTEENTH POINT.

Irrespective of the Construction of the Act of 1898 the Defendants Kelley and Cloquet Lumber Company should have been Decreed to account for the Timber Cut by them from Lands Entered Subsequently to January 1, 1898, and should have been Enjoined from Further Cutting upon such Lands.

It was shown by uncontradicted testimony that the defendant Kelley had cut or caused to be cut, partly by the Cloquet Lumber Company, 2,948,230 feet of pine timber from five forty acre tracts of land situate in Section 19, Township 54, Range 12. Two of these forty acre tracts were entered under the Timber and Stone Land Act, after Jan. 1st, 1898. (See Plaintiff's Exhibit No. 58, p. 534.) They were afterwards conveyed to the defendant Kelley by defendants' Exhibit 60, p. 536. All of the pine timber, except "two small bunches" was cut for Kelley by contractors, (pp. 212-214), and was sold by Kelley to Johnson-Wentworth Company under the contract marked Plaintiffs' Exhibit 57, p. 532. The small remnant of pine timber left upon these lands after the first season's cutting was sold by Kelley to the Cloquet Lumber Company under an agreement *requiring* the Cloquet Lumber Company to cut and remove the timber within ten years. (Plaintiffs' Exhibit 62, p.

538.) Just what proportion of the timber was cut by the Cloquet Lumber Company does not appear. This is unimportant, however, as the defendant Michael Kelley is the party primarily liable for the cutting of all the timber, and is a responsible party.

When the court below indicated its views upon the construction of the Act of 1898, the plaintiffs applied for a reference to ascertain what proportion of this timber had been removed from the two forties entered subsequently to January 1st, 1898, but this the court refused upon the ground that, no patents having issued, the plaintiffs were not entitled to recover the value of the timber cut, even from lands unaffected by the Act of 1898.

The testimony with respect to the extent and value of the timber thus cut will be found in Plaintiffs' Exhibit 64, p. 541, and upon pages 214-226 and 205.

These lands having been regularly selected by the Railroad Company many years prior to the time they were entered by the defendants, the plaintiffs are their equitable owners. There is certainly a golden harvest field for the trespasser, if all unpatented railroad selections can be denuded of their timber without any liability to account to the Railroad Company or its assigns. It may be said that recovery can be had after the patent issues; but when is the patent to issue? The selection of these lands was made fifteen years ago, and the issuance of patent seems further off today than it did then. The doctrine is scandalous. A party invested with the equitable title to public land is as much entitled to be protected by a court of equity in the possession of timber cut from it as he is entitled to be protected in possession of the land, and is as much entitled to the proceeds or value of the timber converted as to the timber itself.

Our contention on this point does not trench in the slightest upon the doctrine of Marquez vs. Frisbie. We are not seeking by this particular relief, to litigate title, but merely to preserve possession, not only of the land, but of the timber which has been separated from it, or of its proceeds in case it has been converted. In seeking to recover from these trespassers the value of the timber they have cut upon land of which we are the equitable owners, we are not asking to intercept the patent or affect its operation, but we are merely seeking to protect ourselves in the actual enjoyment of possession, for the time being, of the land, and the property or its proceeds which the defendants have wrongfully removed from it.

As to the denial of injunction against the continuance of trespass by Kelley and the Cloquet Lumber Company, no further evidence is necessary of their intention to continue the cutting than the fact that they have already cut a portion of the timber and claim the right to cut the remainder.

Gibson vs. Smith, 2 Atk., 182.
3 Atk., 484.
Crockett vs. Crockett, 2 Ohio State, 180.
Attorney General vs. Burrows, Dick., 128.

Our equitable ownership is sufficient to entitle us to an injunction for the prevention of a trespass destructive of the substance of the property.

Thompson vs. Lynam, 1 Del. Ch., 64.
Camp vs. Bates, 11 Conn. 51.
Webb vs. Boyle, 63 N. C. 271.
McLure vs. Sherman, 70 Fed., 190.

Nor is it material for such purpose that the legal title is still in the United States, or that the proceedings for acquisition of title are still pending before the land department.

LaChapelle vs. Bubb, 69 Fed., 481.

These lands are confessedly well timbered lands from which only the white pine has been removed. The cedar, the spruce and the miscellaneous hard woods that constitute the ordinary forests throughout Northern Minnesota are presumptively still standing and liable to be cut at any time. If we are found to be the equitable owners of these lands, we confidently submit that we are entitled to be protected by injunction.

It may be noticed in this connection that the testimony for complainants also established a trespass by the defendant, the Franklin Lumber Company, upon the southeast quarter of the northwest quarter, and the northeast quarter of the southwest quarter, of section 1-54-13. The testimony for defendants was to the effect that this trespass did not exceed 780,762 feet. The testimony *pro* and *con*, on quantities and values, is to be found at pages 193-212 of printed record. This trespass like the above mentioned trespass by the defendants Kelley and Cloquet Lumber Company, was committed upon unpatented land. It was, however, land which had been entered prior to January 1st, 1898, so that our right to recover for it, depends, among other things upon whether any of these lands are affected by the act of 1898.

SEVENTEENTH POINT.

The decree of dismissal should be reversed, and judgment should be directed for complainants as prayed in their bill of complaint.

WM. W. BILLSON,
CHESTER A. CONGDON,
H. OLDENBURG,
Solicitors for Appellants.

C. W. BUNN,
J. B. KERR,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

No. [illegible]. 7.

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JAMES H. McKE

JOHN A. HUMBIRD AND FREDERICK WEYERHAEUSER,
Appellants.

VS.

WALDO A. AVERY, ET AL.,
Respondents,

THE UNITED STATES,
Intervenor.

Certification from United States Circuit Court of Appeals for the Eighth Circuit.

SUPPLEMENTAL BRIEF FOR APPELLANTS.

WM. W. BILLSON,
C. W. BUNN and
JAMES B. KERR,
Counsel for Appellants.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

No. 89.

JOHN A. HUMBIRD AND FREDERICK WEYERHAEUSER,
Appellants.

VS.

WALDO A. AVERY, ET AL.,
Respondents,

THE UNITED STATES,
Intervenor.

Certification from United States Circuit Court of Appeals for the Eighth Circuit.

SUPPLEMENTAL BRIEF FOR APPELLANTS.

The jurisdiction of the secretary of the interior under the act of July 1*st,* 1898 *is exclusive.*

The circuit court dismissed the bill in so far as it relates to patented lands upon the sole ground that the titles of the defendants were confirmed by the act of July 1, 1898. The court treated the act, when accepted by the railway company, as operating *ipso facto* to extinguish the title of the company to all lands adversely claimed under the public land laws. An examination of the terms of the act shows, however, that it is not self executing, but merely affords a method of adjustment by the secretary of the interior of conflicting claims.

The first provision of the act defines the class of lands upon which it shall operate, namely, lands claimed under the Northern Pacific grant, and also either purchased or settled upon *in good faith* by a *qualified settler.* The act then provides under what circumstances the railroad grantee shall be entitled to select lieu land in place of the contested land, namely, when the individual claimant refuses to transfer his entry "as hereinafter provided." Then follows this language:

> "Provided, however, that the secretary of the interior shall from time to time ascertain and, as soon as conveniently may be done, cause to be prepared and delivered to the said railroad grantee or its successors in interest a list or lists of the several tracts which have been purchased or settled upon or occupied as aforesaid, and are now claimed by said purchasers or occupants, their heirs or assigns, according to the smallest government subdivisions."

The act then provides for the relinquishment to the United States by the railroad grantee of its rights and provides that after such relinquishment the claims of the individual claimants shall be treated as if the railroad grant had never been made. The act also provides that the individual claimant shall have the right in the first instance to transfer his entry to other public lands before any list calling for a relinquishment shall be delivered to the railroad grantee by the secretary of the interior. The act provides that the railroad grantee shall not be required to relinquish lands which have been sold, lands valuable for stone, iron or coal, or lands used or required for railroad purposes.

By the terms of the act the adjustment of conflicting claims is expressly committed to the secretary of the interior. Before the act can affect the title to any tract of land there must be (a) a finding by the secretary that the land is of the class contemplated by the act; (b) there must be a finding by the secretary that the adverse claim was initiated prior to January 1st, 1898, by a claimant in good faith; (c) the secretary must demand of the original claimant, his heirs or assigns, an election to retain the land or transfer his entry, and this requires a determination as to who are heirs or assigns; (d) the secretary must serve upon the railway company a list describing the land and calling for a relinquishment, and (e) the secretary must determine whether the land has been sold, is valuable for stone, iron or coal or used or required for railroad purposes. Until all these acts are performed and these essential facts are found by the secretary the title of the railway company remains unaffected. And it affirmatively appears that the secretary has never included any of the lands here in controversy in any list prescribed by the act (Record, pp. 130, 131, 191, 192).

The sole inducement to the railway company to accept the provisions of the act lies in the offer of indemnity in lieu of contested tracts, and by the express terms of the act this right of indemnity can only arise when lands are relinquished in response to the demand of the secretary after that officer has determined the matters of fact which must be found before the act contemplates a relinquishment. The railway company cannot determine for itself these facts and by a voluntary relinquishment of a tract which it conceives to be within the contemplation of the act entitle itself to select land in lieu thereof. No more can the courts determine these questions committed by the act to the secretary of the interior and by their findings entitle the railway company to select other land. The functions of the secretary in the adjustment of conflicting claims under the act are manifestly exclusive and closely related to his functions in directing the selections of indemnity lands in lieu of lands excepted from the place limits of railroad land grants. His duties in that regard are considered at length by this court in *Wisconsin Central Railroad Co. v. Price County* 133 U. S. 496, 511.

It is plain, therefore, that the decree of the circuit court dismissing the complainants' bill upon the ground that defendants' titles were confirmed by the act of July 1st, 1898, without action under it by the secretary of the interior gave neither the railway company nor the complainants the right to select other lands. It is manifest both from the spirit and the letter of the act that the railway company's title to disputed lands was not intended to be affected except by the creation of the right to take other lands. It follows, therefore, that inasmuch as the decree does not and cannot create this right, it is erroneous in attempting to destroy the title of complainants and confirming the titles of the defendants under this legislation.

In *Wisconsin Central Railroad Company v. Price County, supra*, speaking of the duty of the secretary of the interior with respect to selections of indemnity land, the court said:

> "His action in that matter was not ministerial but judicial. He was required to determine, in the first place, whether there were any deficiencies in the land granted to the company which were to be supplied from indemnity lands; and, in the second place, whether the particular indemnity lands selected could be properly taken for those deficiencies. In order to reach a proper conclusion on these two questions he had also to inquire and determine whether any lands in the place limits had been previously disposed of by the government, or whether any preemption or homestead rights had attached before the line of the road was definitely fixed. There could be no indemnity unless a loss was established. And in determining whether a particular selection could be taken as indemnity for the losses sustained, he was obliged to inquire into the condition of those in-

> demnity lands, and determine whether or not any portion of them had been appropriated for any other purpose, and if so, what portion had been thus appropriated, and what portion still remained."

And this jurisdiction of the secretary is exclusive. *Cosmos Exploration Co. v. Gray Eagle Oil Co.*, 190 U. S. 301.

Under the proofs in this case it is submitted that the complainants are equitably entitled to the land sued for and that any claim that their right is defeated by the act of 1898 is purely defensive. The burden is upon the defendants to show that their titles have been confirmed and the right of the complainants taken away, and under any construction of the act of 1898 this defense must be based upon findings by the secretary which have not yet been made.

II.

The act of 1898 *applies only to lands occupied by settlers.*

In our principal brief we have attempted to show that, rightly construed, the act of 1898 only applies to lands actually settled upon prior to January 1st, 1898, and does not apply to lands purchased under the timber and stone act (20 Stats. 89 and 27 Stats. 348). Two additional suggestions may be made in support of this view. The right of purchase without settlement given by the timber and stone act is limited to lands valuable for timber or stone and unfit for cultivation. The act of 1898 in permitting the transfer of individual claims to lands in lieu of those originally entered expressly provides that lands valuable for stone shall not be so taken. This provision is manifestly inconsistent with the view that the act was intended to cover timber and stone entries.

In the next place the construction that extends the act to lands acquired by purchase under the timber and stone act is in direct conflict with the settled policy of public land legislation. If the act be so construed it would permit a cash purchaser under a timber and stone entry to take in lieu thereof agricultural lands without settlement. When the preemption law was repealed in 1891 (26 Stats. 1095) the practice of disposing of agricultural lands for cash without continued residence and cultivation was abandoned and the nearest approach to it under existing legislation is the commutation provision of the homestead law (26 Stats. 1095) permitting purchase for cash after fourteen months residence and cultivation. To apply the act of 1898 to purchases under the timber and stone act would be to evade the settled policy and by permitting such lands to be exchanged for agricultural lands allow that to be done indirectly which cannot be done directly.

Respectfully submitted,
WM. W. BILLSON,
C. W. BUNN and
JAMES B. KERR,
Counsel for Appellants.

FILE COPY.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1904.

No. ~~[illegible]~~ 7.

JOHN A. HUMBIRD AND FREDERICK WEYERHAUSER, APPELLANTS,

vs.

WALDO A. AVERY ET AL., RESPONDENTS; THE UNITED STATES, INTERVENOR.

CERTIFICATION FROM UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

TRANSCRIPT OF DECISIONS BY THE INTERIOR DEPARTMENT, SHOWING ACTION UNDER THE ACT OF JULY 1, 1898, RELATING TO LANDS SOLD BY THE NORTHERN PACIFIC RAILWAY COMPANY.

SUBMITTED BY APPELLANTS.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. [illegible]

Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

No. 89.

JOHN A. HUMBIRD AND FREDERICK WEYERHAUSER, APPELLANTS,

vs.

WALDO A. AVERY ET AL., RESPONDENTS; THE UNITED STATES, INTERVENOR.

CERTIFICATION FROM UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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SUBMITTED BY APPELLANTS.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *May* 8, 1901.

(Published in 30 Land Decisions, 602.)

Commissioner of the General Land Office.

SIR: The Department is in receipt of your office letter of the 30th ultimo, making report in the matter of the conflict ing claims to the N. W. ¼ of sec. 25, T. 52 N., R. 14 W., Duluth land district, Minnesota.

From said report it appears that this tract is within the primary limits of the grant made to aid in the construction of the Northern Pacific railroad and is opposite the portion thereof definately located July 6, 1882. It fell to the east of the terminal limit of said grant, erroneously fixed at Duluth, in accordance with departmental decision of July 27, 1896 (23 L. D., 204), and for that reason Charles H. Johnson was permitted to make homestead entry of the land on June 12, 1897.

Following the decision of the Supreme Court in the case of The United States *vs.* Northern Pacific R. R. Co. (177 U. S., 435), which fixed the eastern terminus of the Northern Pacific land grant at Ashland, in the State of Wisconsin, Johnson elected to retain this tract as against the company under the provisions of the act of July 1, 1898 (30 Stat., 597–620), and thereupon the said tract was included in a list submitted to and approved by this Department on January 11, last, and the Northern Pacific Railway Company, successor in interest to the Northern Pacific Railroad Company, was invited to relinquish its claim to this land under the provisions of said act.

Responding thereto, a showing was filed by the railway company evidencing a sale of this land to Frederick Weyerhauser and John A. Humbird on April 14, 1900. Thereupon Johnson and his wife executed a relinquishment releasing, quitclaiming, and relinquishing to the United States all their right, title, and interest in and to the above-described land under said homestead, with a view to transferring their claim to other land, as provided for in the act of 1898. This relinquishment was forwarded for the consideration of this Department by your office letter of March 29 last, the matter being considered in departmental decision of April 8 last, not reported, in which it was held that—

In view of the showing filed by the company it is clear that it cannot be required to relinquish this land under said act of July 1, 1898, *supra*, and in response to your office letter of the 29th ultimo, you are informed that this Department sees no objection to the acceptance of the relinquishment executed by Johnson and his wife.

It further appears that upon the establishment of the limit of the withdrawal of May 26, 1864, for the Lake Superior and Mississippi railroad, under the grant made by the act of May 5, 1864, this land was included within the limits of said withdrawal and, as a consequence, was excepted from the Northern Pacific grant. (See Northern Pacific Ry. Co. *vs.* Rooney, 30 L. D., 403.)

Paragraph 9 of the regulations issued under the act of July 1, 1898, *supra*, approved February 14, 1899 (28 L. D., 103, 107), in defining what are the claims coming within the provisions of said act, states that—

> The railroad claim is one which arises from the definite location of the line of railroad if the land is within the primary limits of the grants, or which arises from a lieu selection if the land is within the indemnity limits, and is one which, in the absence of all individual claims would enable the railroad claimant to obtain full title to the land.

It is clear that in the absence of the claim made to this land by Johnson under his homestead entry the company would not be able to obtain any title to the land, the same having been excepted from its grant by reason of the withdrawal made prior to the grant on account of the Lake Superior and Mississippi railroad grant, and conflicting claims to this land are therefore clearly not subject to adjustment under the provisions of said act. Departmental decision of April 8, last, is hereby recalled and vacated and the relinqishment by Johnson of his claim to this land under the act of 1898 is rejected.

You are directed to make an immediate examination of the tracts submitted for and approved by the Department for relinquishment under said act, and as to the lands included within said withdrawal of May 26, 1864, said approval is revoked. You will advise the company at once of such revocation and take no further steps toward the adjustment of conflicting claims to such land under the provisions of the act of July, 1898.

Very respectfully, THOMAS RYAN,
Acting Secretary.

3251-1901. 250-49.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *April* 8, 1901.

The Commissioner of the General Land Office.

SIR: From the report made in your office letter of the 29th ultimo, relative to the homestead entry of Charles R. Johnson, covering the N. W. ¼ of sec. 25, tp. 52 N., R. 14 W., Duluth land district, Minnesota, it appears that said tract is within the primary limits of the grant made to aid in the construction of the Northern Pacific railroad and opposite the portion of the road definitely located July 6, 1882. At that date the tract was free from adverse claim, so far as shown by the record, and, as a consequence, passed to the railroad company under its grant. It fell to the east of the terminal limit of said grant, fixed at Duluth in accordance with departmental decision of August 27, 1896 (23 L. D., 204), and for that reason Johnson was permitted to make homestead entry of this land on June 12, 1897.

Following the decision of the Supreme Court in the case of United States *vs.* Northern Pacific Railroad Company (177 U. S., 435), which fixed the eastern terminus of the Northern Pacific land grant at Ashland, in the State of Wisconsin, Johnson elected to retain this tract as against the company under the provisions of the act of July 1, 1898 (30 Stat., 597-620), and thereupon this tract was included in a list submitted to and approved by this Department on

January 11 last, and the Northern Pacific Railway Company as successor to the Northern Pacific Railroad Company was invited to relinquish its claim to this land under the provisions of said act.

Responding thereto, a showing was filed by the railway company, evidencing a sale of this land to Frederick Weyerhauser and John A. Humbird on April 14, 1900.

On February 26 last there was forwarded to your office a relinquishment executed by Chas. R. Johnson and his wife, releasing, quitclaiming, and relinquishing unto the United States all his right, title, and interest in and to the above-described land under his said homestead entry, which was submitted in your said office letter of the 29th ultimo, with request for instructions in the premises.

In view of the showing filed by the company, it is clear that it cannot be required to relinquish this land under said act of July 1, 1898, *supra*, and in response to your office letter of the 29th ultimo you are informed that this Department sees no objection to the acceptance of the relinquishment executed by Johnson and his wife, which is herewith returned with accompanying papers.

Very respectfully,
THOS. RYAN,
Acting Secretary.

5305–1899.
DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *March* 20, 1900.

RELINQUISHMENT No. 5, NORTHERN PACIFIC RAILWAY CO. ACT OF JULY 1, 1898.

The Commissioner of the General Land Office.

SIR: Under date of December 1st last this Department approved a list of lands (list No. 5) within the limits of the grant to the Northern Pacific Railroad Company, within the State of Montana, subject to relinquishment under the act of July 1, 1898 (30 Stat., 597–620).

From your office letter of the 19th instant and accompanying papers, it appears that upon being notified thereof the Northern Pacific Railway Company, successor in interest to the Northern Pacific Railroad Company, executed what is denominated relinquishment No. 5, covering certain tracts embraced in said approved list. Relative to said relinquishment your office letter recommended that the same be accepted by the Department to the end that the individual claimants may be permitted to perfect title to the land relinquished and the company allowed to select other lands, as provided for in the act of July 1, 1898.

As said relinquishment after examination appears to meet the requirements of said act and the regulations of the Department thereunder, the recommendation of your office letter that the same be accepted is approved.

The company also executed relinquishment No. 5–A of its right, title, interest, and claim in and to the S. E. ¼ N. W. ¼ of sec. 3, tp. 1 N., R. 4 W. in the State of Montana, excepting from the relinquishment a certain strip of land two hundred feet wide, lying between two lines each drawn parallel with and distant one hundred feet from the center line of the main track of the railway as the same is now located, constructed, and operated on and over or across said tract.

As to this relinquishment you recommended that the individual claimant for the tract covered thereby be afforded an opportunity to elect to transfer his claim to another tract or to retain the same, subject to the reservation contained in the relinquishment executed by the railway company. The recommendation of your office in this particular is also approved, and further action upon the relinquishment will be suspended until the individual claimant makes his election.

With respect to the S. ½ N. W. ¼ and the W. ½ S. W. ¼ of sec. 35, tp. 1 N., R. 1 W., included in the list approved by this Department as the basis for relinquishment, it appears that the company, on March 30, 1899, sold the same to one Adolphus J. Woodward. Relative to this tract, you recommend that John H. Carle, the individual claimant against the grant, be notified of the showing and afforded another opportunity to transfer his claim to other land, as provided for in the act of July 1, 1898, or to have his contest with the railroad company proceed to final determination upon its merits. This recommendation is also approved, and the papers accompanying your office letter of the 15th instant are herewith returned with acceptance of relinquishment No. 5 noted thereon.

Very respectfully,
E. A. HITCHCOCK,
Secretary.

1699–1900.
DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *May* 19, 1900.

RELINQUISHMENT No. 12. STATE OF WASHINGTON. NORTHERN PACIFIC RAILWAY COMPANY. ACT OF JULY 1, 1898.

The Commissioner of the General Land Office.

SIR: Under date of March 20 last this Department approved a list of lands (No. 12) within the limits of the grants to the Northern Pacific Railroad Company within the State of Washington subject to relinquishment under the act of July 1, 1898 (30 *Stat.*, 597–620).

From your office letter of the 9th instant and accompanying papers it appears that upon being notified thereof the Northern Pacific Railway Company, the successor in interest of the Northern Pacific Railroad Company, executed what is denominated as relinquishment No. 12, covering all of the lands embraced in said approved list, excepting the S. E. ¼ of sec. 5, tp. 15 N., R. 42 E., Walla Walla land district, Washington.

Relative to said relinquishment, your office letter recommends the same be accepted by the Department, to the end that the individual claimants may be permitted to perfect title to the lands relinquished and the company allowed to select other lands in lieu thereof, as provided in the act of July 1, 1898. As said relinquishment, after examination, appears to meet the requirements of said act and the regulations of the Department thereunder, the recommendation that the same be accepted is approved, and the relinquishment is herewith returned with the acceptance noted thereon.

With respect to the excepted tract, it appears that on January 19, 1900, the railway company sold said tract to James C. Waymire. Relative to this tract, you recommend that Hiram Tubbs, the individual claimant as against the grant, be notified of the showing made by the company and afforded another opportunity to transfer his claim to other land, as provided for in the act of July 1, 1898, or to have his contest with the railroad company proceed to a final determination upon its merits. This recommendation is also approved, and you will proceed as indicated.

Very respectfully, E. A. HITCHCOCK,
Secretary.

1469–1900. DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *September* 14, 1900.

RELINQUISHMENT NO. 2. STATE OF IDAHO. NORTHERN PACIFIC RAILWAY COMPANY. ACT OF JULY 1, 1898.

The Commissioner of the General Land Office.

SIR: Under date of March 17 last this Department approved a list of land, No. 2, within the limits of the grant for the Northern Pacific Railroad Company within the State of Idaho subject to relinquishment under the act of July 1, 1898 (30 Stat., 597–620).

From your office letter of the 6th instant and accompanying papers it appears that upon being notified thereof the Northern Pacific Railway Company, successor in interest to the Northern Pacific Railway Company, executed what is denominated as relinquishment No. 2, State of Idaho, covering certain tracts embraced in said approved list. Relative to said relinquishment, your office letter recommended that the same be accepted by the Department, to the end that the individual claimants may be permitted to perfect title to the land relinquished and the company allowed to select land, as provided by the act of July 1, 1898.

As said relinquishment appears, after examination, to meet the requirements of said act and the regulations of the Department thereunder, the recommendation of your office that the same be accepted is approved, and it is herewith returned with the acceptance of the Department noted thereon.

It appears that said relinquishment embraces all the lands included in said list No. 2, with the exception of the E. ½ S. W. ¼ of sec. 19, tp. 42 N., R. 5 W., Lewiston land district, which from the showing filed appears to have been sold by the company on July 18, 1898, to one Francis L. Dailey. Relative to this tract, your office letter makes no recommendation, but in returning the papers you are directed to proceed as provided in paragraph 30 of the regulations of February 14, 1899, advising the individual claimant to this land as against the company of the reported sale by the company and according him another opportunity, to be exercised within a stated time, to relinquish the lands in contest and take other lands in lieu thereof, as provided for in said act; also advising him that in the event that this privilege is declined his contest with the railway company will proceed to final decision in the usual way.

Very respectfully, F. L. Campbell,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *December* 3, 1900.

The Commissioner of the General Land Office.

SIR: Under date of July 24th last this Department approved a list of lands, No. 15, within the limits of the grant to the Northern Pacific Railroad Company within the State of Washington, subject to relinquishment under the act of July 1, 1898 (30 Stat., 597, 620).

From your office letter of November 15 last and accompanying papers, it appears that upon being notified thereof the Northern Pacific Railway Company, successor in interest to the Northern Pacific Railroad Company, executed what is denominated as list No. 15, State of Washington, covering a portion of the lands embraced in said list. Accompanying the relinquishment there was filed evidence of sale by the railway company of the remainder of the lands included in said approved list and not embraced within its relinquishment.

In the matter of the individual claim of Mary Batvia the company relinquished the S. ½ N. E. ¼ of sec. 5, T. 23 N., R. 19 E., included in her said claim, but reports its inability to relinquish the W. ½ S. E. ¼ of said section 5, also included in her claim, because of the sale of the land to one Norman S. Titchenal on April 28, 1899.

In the matter of the individual claim of George W. Briskey, covering the N. ½ S. W. ¼, S. E. ¼ N. W. ¼, S. W. ¼ N. E. ¼, sec. 13, T. 23 N., R. 17 E., no portion of the same is included in the company's relinquishment because of the reported sale of the N. ½ S. W. ¼ to John E. Shaw on February 21, 1900, and the S. W. ¼ N. E. ¼ and S. E. ¼ N. W. ¼ to T. D. Estes on May 13, 1899.

These individual claimants as against the railway company should be notified of the showing made and afforded another opportunity to transfer their claims to other lands as provided for in the act of July 1, 1898, or to have their contests with the railway company proceed to final determination upon their merits. * * *

Very respectfully,
THOS. RYAN,
Acting Secretary.

386–1902.
DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *April* 15, 1902.

RELINQUISHMENT NO. 17. STATE OF MONTANA, NORTHERN PACIFIC RAILWAY CO. ACT OF JULY 1, 1898.

The Commissioner of the General Land Office.

SIR: On February 5, last, this Department approved a list, No. 17, of lands within the State of Montana and within the limits of the Northern Pacific Railroad grant, subject to relinquishment under the provisions of the act of July 1, 1898 (30 Stats., 597, 620).

From your office letter of the 12th instant and accompanying papers it appears that upon being requested to relinquish the lands included in said list, the Northern Pacific Railway Company, as successor in interest to the Northern Pacific Railroad Company, executed what is denominated as relinquishment No. 17, State of Montana, including all of the lands covered by said approved list with the exception of the E. ½ N. W. ¼ and E. ½ S. W. ¼, sec. 7, T. 12 N., R. 22 W., with regard to which tract it reported its inability to make relinquishment because of a contract of sale made with Marcus Daily on February 9, 1899.

Your office letter finds that the relinquishment is in conformity with the regulations issued under the act of 1898, and therefore recommends that the same be accepted, and with regard to the tract reported to have been sold recommends that the individual claimant to said tract as against the grant, be advised of the sale and offered another opportunity to transfer his claim to other lands, as provided for in the act, or to have his contest with the company proceed to final determination upon its merits. These recommendations are approved and the relinquishment is returned herewith bearing the acceptance and approval of the Department.

Very respectfully, E. A. HITCHCOCK,
Secretary.

4708–1902. DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *December* 22, 1902.

RELINQUISHMENT No. 23, STATE OF MONTANA, NORTHERN PACIFIC RAILWAY CO. ACT OF JULY 1, 1898.

The Commissioner of the General Land Office.

SIR: With your office letter of the 16th instant was transmitted relinquishment No. 23, State of Montana, executed by the Northern Pacific Railway Company, successor in interest to the Northern Pacific Railroad Company, under the provisions of the act of July 1, 1898 (30 Stat., 597, 620), containing certain lands included in list No. 23, approved by this Department, October 18th last, as a basis for relinquishment is also an affidavit, by the chief clerk in the office of the land commissioner for said company, to the effect that the N. W. ¼ N. E. ¼ and the N. E. ¼ N. W. ¼ of sec. 15, T. 14 N., R. 19 W., which was included in the list approved by this Department for relinquishment, but not embraced in the relinquishment above referred to, was, on August 31, 1901, sold by the railway company to the Big Blackfoot Milling Company of Bonner, Montana.

Your office letter recommends that the relinquishment be accepted, and, with respect to the tract reported to have been sold, that the individual claimant thereof as against the grant be advised of the reported sale and permitted another opportunity to transfer his claim to other tracts, and advised that in the event he declines so to do his contest with the railway company will proceed to final determination upon its merits.

The relinquishment upon examination being found to be in conformity with the regulations issued under said act, the recommendations made by your office are approved and the relinquishment is herewith returned with the acceptance of the Department noted thereon. You will advise the company of the acceptance and inform it that upon proper application selection of other lands in lieu of those relinquished will be permitted in accordance with the conditions and limitations of the act of July 1, 1898, *supra*.

Very respectfully,

E. A. HITCHCOCK, *Secretary*.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *October* 4, 1902.

Register and Receiver, Missoula, Montana.

SIRS: April 22, 1902, you transmitted the election of Joseph A. Schmitz to retain under the act of July 1, 1898, the S. E. ¼, sec. 11, tp. 13 N., 23 W., which he claims to have resided upon and cultivated continuously since November, 1891, with the intention of entering the same under the homestead law.

The election being in conformity with the instructions of February 14, 1899, under said act, Schmitz's case was included in a list (19) and transmitted to the Department, with recommendation that the Northern Pacific Railway Company be invited to relinquish the land involved therein, which is within the primary limits of the grant to said railway company, and select other land in lieu thereof under said act.

The Department having on May 10, 1902, approved said list (19), the railway company was duly called upon by this office to relinquish such of the lands included therein as did not come within any of the exceptions provided for in the second proviso of the act of July 1, 1898, *supra*.

By letter of June 7, 1902, Messrs. Britton and Gray, the resident attorneys for said company, furnished satisfactory proof showing that the land covered by Schmitz's election was on August 31, 1901, sold to the Big Blackfoot Milling Company for a valuable consideration.

Upon advice of such fact by office letter "F" of September 15, 1902, the Department on the 20th of said month directed that Schmitz be afforded a further opportunity to elect whether to transfer his claim to other land or to have his case proceed to final decision on its merits.

You will therefore notify Schmitz that he will be allowed thirty days from receipt of notice hereof in which to make such further election and that his failure so to do will be deemed an election on his part to have the case decided on its merits independently of the act of July 1, 1898, *supra*.

At the proper time report action taken.

Very respectfully, BINGER HERMANN,
Commissioner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *October* 4, 1902.

Register and Receiver, Missoula, Montana.

SIRS: April 22, 1902, you transmitted the election of Daniel L. Murr to retain under the act of July 1, 1898, the E. ½ S. E. ¼ sec. 5, tp. 25 N., 26 W., which he claims to have resided upon and cultivated continuously since 1880, with the intention of entering the same under the homestead law.

The election being in conformity with the instructions of February 14, 1899, under said act, Murr's case was included in a list (19) and transmitted to the Department with recommendation that the Northern Pacific Railway Company be invited to relinquish the land involved therein, which is within the primary limits of the grant to said railway company, and select other land in lieu thereof, under said act.

The Department having on May 10, 1902, approved said list (19), the railway company was duly called upon by this office to relinquish such of the lands included therein as did not come within any of the exceptions provided for in the second proviso of the act of July 1, 1898, *supra.*

By letter of June 7, 1902, Messrs. Britton & Gray, the resident attorneys for said company, furnished satisfactory proof showing that the land covered by Murr's election was, on August 31, 1901, sold to the Big Blackfoot Milling Company for a valuable consideration.

Upon advice of such fact by office letter " F " of September 15, 1902, the Department, on the 20th of said month, directed that Murr be afforded a further opportunity to elect whether to transfer his claim to other land, or to have his case proceed to final decision on its merits.

You will therefore notify Murr that he will be allowed thirty days from receipt of notice hereof in which to make such further election, and that his failure so to do will be deemed an election on his part to have the case decided on its merits independently of the act of July 1, 1898, *supra.*

At the proper time report action taken.

Very respectfully, BINGER HERMANN,
Commissioner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *October* 4, 1902.

Register and Receiver, Missoula, Montana.

SIRS: April 22, 1902, you transmitted the election of George H. Young to retain under the act of July 1, 1898, lots 1 and 2 of section 31, tp. 14 N., R. 24 W., which he claims to have resided upon and cultivated continuously since May, 1897, with the intention of entering the same under the homestead law.

The election being in conformity with the instructions of February 14, 1899, under said act, Young's case was included in a list (19) and transmitted to the Department with recommendation that the Northern Pacific Railway Company be invited to relinquish the land involved therein, which is within the primary limits of the grant to said railway company, and select other land in lieu thereof under said act.

The Department having, on May 10, 1902, approved said list (19), the railway company was duly called upon by this office to relinquish such of the lands included therein as did not come within any of the exceptions provided for in the second proviso of the act of July 1, 1898, *supra*.

By letter of June 7, 1902, Messrs. Britton & Gray, the resident attorneys for said company, furnished satisfactory proof showing that the land covered by Young's election was on August 31, 1901, sold to the Big Blackfoot Milling Company for a vualuable consideration.

Upon advice of such fact by office letter "F" of September 15, 1902, the Department, on the 20th of said month, directed that Young be afforded an opportunity to elect whether to transfer his claim to other land or to have his case proceed to final decision on its merits.

You will therefore notify Young that he will be allowed thirty days from receipt of notice hereof in which to make such further election, and that his failure so to do will be deemed an election on his part to have the case decided on its merits independently of the act of July, 1898, *supra*.

At the proper time report action taken.

Very respectfully, BINGER HERMANN,
Commissioner.

FILE COPY.

Supreme Court of the United States.

Office Supreme Court U. S.
FILED
[illegible]
JAMES H. McKENNEY,
Clerk.

JOHN A. HUMBIRD and
FREDERICK WEYERHAEUSER
vs.
WALDO A. AVERY, et al.

No. [illegible] 7.

Brief in Behalf of Defendants, Waldo A. Avery and Others.

BENTON HANCHETT,
Of Counsel for Defendants Waldo A. Avery and others.

[illegible]
Solicitor for Defendants Waldo A. Avery and others.

[illegible]

Supreme Court of the United States.

JOHN A. HUMBIRD and
FREDERICK WEYERHAUSER
vs.
WALDO A. AVERY, et al.

No. 89.

Brief in Behalf of Defendants, Waldo A. Avery and Others.

This suit is brought to quiet the complainants' title to the lands which are described in Exhibit A of the bill of complaint.

The complainants claim title to the lands through selection lists filed by the Northern Pacific Railroad Company under the grant of lands made to that company by Act of Congress of July 2nd, 1864, (13 U. S. Statutes, p. 365,) and by resolution of Congress of May 31st, 1870, (16 U. S. Statutes, p. 378,) and through transfer of the rights of the Northern Pacific Railroad Company to the Northern Pacific Railway Company, and by two deeds of conveyance by the latter company to the complainants, dated January 19th, 1900.

The lands are situated, a part in the first indemnity limits and a part in the second indemnity limits of the grant.

The defendants claim title to the lands under entries and purchases made under the land laws of the United States.

No question is made of the regularity of the entries and purchases, or of their validity, other than the claim of the complainants that the defendants' titles were taken and are held subject to the complainants' superior title obtained through said selection lists filed by the said Northern Pacific Railroad Company.

(Bill of complaint, paragraph XII, R. p. 11.)

I.

THE PLEADINGS.

The bill avers that the whole of the line of the Northern Pacific Railroad was definitely located, and the road was constructed from the City of Ashland in the State of Wisconsin, to a point on Puget Sound, and that the land in question was situated in the State of Minnesota opposite to and co-terminus with and more than twenty miles, but less than forty miles distant from said line of definite location of that portion of the railroad, extending from Thompson Junction to Ashland.

It sets up the complainants' title to the land by the following statements, viz.:

"That between the 16th day of October, 1883, and the 10th day of November of said year, the said Northern Pacific Railroad Company, complying in all respects with the instructions of the Secretary of the Interior, and under the direction of the Secretary of the Interior, duly selected all the lands described in said Exhibit A, to this bill of complaint annexed, by filing in the United States District Land Office, at Duluth, in the State of Minnesota, within which district said lands so selected were situate, its certain selection lists under and in accordance with the provisions of said Act of Congress, approved July 2nd, 1864, and said joint resolution of May 31st, 1870, and thereby selected all of said lands as indemnity, in lieu of other lands excepted from said grant."

"That the said selection lists were four in number, and were numbered respectively 10, 15A, 15B and 16, the first of the aforesaid lists relating to lands within the first indemnity limits, and bearing date October 17th, 1883, and the others relating to lands within the second indemnity limits, and bearing date October 17th, 1883, or some other date or dates to plaintiffs unknown."

"That upon the filing of said several selection lists, said Northern Pacific Railroad Company duly paid to the Land Officers of said District Land Office all the fees required by law, and said officers duly certified under dates of October 17th and November 9th, 1883, that said selection lists were accepted and approved, and that the lands described therein, including all the lands described in said Exhibit A hereto attached, were public lands to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights."

"And plaintiffs further allege that thereafter, and on the 17th day of October, and on the 9th day of November, 1883, and on the 10th day of October, 1887, complying with certain other and further instructions of the Secretary of the Interior, the said Northern Pacific Railroad Company filed in the said District Land Office at Duluth, Minnesota, certain lists wherein and whereby said Railroad Company specified *an equal quantity of lands lost from the primary or place limits of said grant*, under the provisions of said Act of July 2nd, 1864, and said resolution of May 31st, 1870, equal in area to those lands described in the said several selection lists hereinbefore mentioned."

"That thereafter, and on June 19th, 1891, and on April 11th, 1893, the said Northern Pacific Railroad Company, insisting and maintaining that its prior selections of the lands described in the said Exhibit A, hereto annexed, were in all respects valid and sufficient, and for the purpose of complying with certain other and further directions and requirements of the Secretary of the Interior, issued subsequent to the original dates of selection hereinbefore mentioned, and complying in all respects with said subsequent instructions of the Secretary of the Interior, filed in said United States District Land Office at Duluth, Minnesota, *certain re-arranged lists, wherein and whereby said railroad company designated the particular losses of lands within the primary or place limits of said grant,* in lieu of which it selected each tract of land described in the several indemnity selection lists hereinbefore mentioned, and particularly each tract of the lands in the aforesaid Exhibit A described."

"Plaintiffs further allege that each of the tracts described in said several indemnity selection lists, and each of the tracts described in said Exhibit A, was selected by said Railroad Company in lieu of a tract or tracts of corresponding size situate within the primary or place limits of the original grant to said Railroad Company, within the State of Minnesota, which had been lost to the said Railroad Company by reason of having been granted, sold, reserved, occupied, pre-empted or otherwise disposed of prior to the time when that part of the line of said road lying opposite the same had been finally fixed and located, each of which tracts so lost to said company was and is situate in the State of Minnesota, and coterminus with and within twenty miles of the line of said Northern Pacific Railroad; as definitely fixed in and through the State of Minnesota; and that at the date of the definite location of that portion of the line of said Railroad Company in the State of Minnesota opposite thereto, the said lands so designated as particular losses in lieu of which the aforesaid indemnity selections were so made, had been granted, sold, reserved, occupied, pre-empted or otherwise disposed of by the United States, whereby the said Northern Pacific Railroad Company had become entitled to receive indemnity therefor."

"Plaintiffs further allege that neither at the time of the final location of that part of said line of railroad extending from Thompson Junction westward across the State of Minnesota, nor at the final location of that part of the line of said road extending eastward from said Thompson Junction to Ashland, was there, in the State of Minnesota, the amount of lands per mile (either of the said road lying in Minnesota to the eastward of said Thompson Junction, or of the said line as afterwards extended as aforesaid to the easterly boundary line of said State) granted by Congress to said company within the limits prescribed by its charter; and that it was to make good the deficiency so existing on account of said line of railway in the State of Minnesota, and conformably in all respects to the conditions and requirements of the joint resolution of Congress hereinbefore mentioned, that all the lands in Exhibit A, described, lying more than thirty miles distant from the line of said road as finally located, were selected by said railroad company, each of said tracts so selected representing a tract or tracts of like size lost as hereinbefore described, and which, by reason of the deficiency aforesaid, could not be made good within the indemnity limits originally fixed by said Act of 1864. That all of the lands in Exhibit A, described, are non-mineral lands."

"And plaintiffs further allege that in accordance with the practice of the Land Department of the United States, said selection lists, filed as hereinbefore alleged, and said lists of losses hereinbefore mentioned, were duly transmitted to the Commissioner of the General Land Office, and that the same are now parts of the files in said office, *but that no action has ever been taken upon said lists or upon the selection of said lands mentioned in Exhibit A, aforesaid, except as hereinbefore and hereinafter set forth.*"

"And plaintiffs further allege that by virtue of the matters hereinbefore set forth, the said Northern Pacific Railroad Company became the owner and entitled to the possession of all the lands in the said Exhibit A, hereto annexed described; and that thereafter and during the year 1898, all the rights, interests and ownership in the lands described in said Exhibit A, which had been theretofore owned or enjoyed by the said Northern Pacific Railroad Company, were duly sold, conveyed and transferred to the Northern Pacific Railway Company, a corporation duly organized and doing business under the laws of the State of Wisconsin."

"That thereafter, and on or about the 19th day of January, A. D. 1900, the said Northern Pacific Railway Company, for value received, duly sold and conveyed by warranty deed in due form to plaintiffs, all of the lands described in the said Exhibit A, hereto attached."

"That down to the time of the execution and delivery of the said deed from the Northern Pacific Railway Company to plaintiffs, the Honorable Secretary of the Interior of the United States had not, nor has he at any time heretofore, caused to be prepared or delivered to either of the said railroad companies, or to any one, a list or lists of any of the tracts which had been purchased or settled upon, or occupied, opposite to, or along any portion of the line of road of said Northern Pacific R. R. Co. east of Thompson Junction aforesaid, as provided by the Act of Congress, entitled, 'An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30th, 1899, and for other purposes,' approved July 1st, 1898."

"Plaintiffs further allege that at the respective dates of the definite location of the various portions of the whole of the said main and branch lines of said railroad, and within the primary limits of the grant to said railroad company, there were ten million six hundred and twenty-four thousand seven hundred and forty-six and 27-100ths (10,624,746.27) acres of land which were lost from said grant by reason of the exceptions contained in said Act of Congress of July 2nd, 1864; that at said respective dates of definite location, there were within the indemnity limits prescribed in said Act of Congress, approved July 2nd, 1864, not more than seven million one hundred and seventy-seven thousand seven hundred and sixty-nine and seventy-one one hundredths (7,177,768.71) acres of land subject to selection under the terms of said Act of Congress of July 2nd, 1864, as indemnity for lands excepted from said grant."

"That of said ten million six hundred and twenty-four thousand seven hundred and forty-six and twenty-seven one hundredths (10,624,746.27) acres of land so excepted from said grant, and for which said railroad company was entitled to receive lands in lieu thereof, not more than two million eight hundred and eighty-seven thousand and seventy-six and fifty-seven one hundredths (2,887,076.57) acres were lost to and excepted from said grant subsequent to the passage and approval of said Act of July 2nd, 1864, and said last mentioned two million eight hundred and eighty-seven thousand and seventy-six and fifty-seven one hundredths (2,887,076.57) acres of said total ten million six hundred and twenty-four thousand seven hundred and forty-six and twenty-seven one hundredths (10,624,746.27) acres so lost as aforesaid, was the only portion thereof which could or can be satisfied under the provisions of the said joint resolution of Congress approved May 31st, 1870, and that the total area of lands in the indemnity limits of said grant to said company, subject to selection as indemnity at the respective dates of the definite location of the various portions of the line of said railroad, lacked more than five hundred and fifty thousand acres of being sufficient to satisfy the losses of said grant."

"That by virtue of the premises and upon the definite location of the line of said railroad, the said Northern Pacific Railroad Company became the owner in fee of all of the lands described in said Exhibit A, hereto annexed."

The foregoing constitute all the statements of the bill showing the steps taken and measures adopted by which the complainants acquired title to the lands.

The bill states the title of the defendants to be, in brief, this:

That after the definite location of the railroad and the construction thereof, and at divers times subsequent to August 1st, 1893, all the lands described in Exhibit A, were permitted by the local land officers of the United States to be entered under various land laws providing for the entry and purchase of public lands; that the persons named in Exhibit A, as grantees, are persons to whom the lands of which they are described as grantees have been conveyed by deed in due form, from the entryman of said lands, the deeds being now of record in the office of the Register of Deeds of the county in which the lands are situated.

The bill further says: "That but for the vested rights of the said Northern Pacific Railroad Company and its grantees in the several tracts of land described in Exhibit A, the said lands would, at the several dates of the respective alleged entries thereof described in said Exhibit A, have been unappropriated public lands of the United States, open to the several kinds of entries or locations made or pretended to be made or applied for with respect to them severally as shown in Exhibit A, and that the several applications and proceedings, with respect to the said several entries were in due form and regularly conducted as required by law, and in the absence of vested rights of the said Northern Pacific Railroad Company, and its grantees, in the said premises, would have been operative and effectual to invest the several entrymen of said lands with vested rights and equitable interests therein; and that with respect to all of said entries which in the said Exhibit A are described as cash entries of lands, each of said entries have been finally receipted for, allowed and approved by the proper land officers of the United States."

Bill of complaint, paragraph XII, R. p. 11.

The answer of the defendants is joint and several. It admits the incorporation of the Northern Pacific Railroad Company, the grant made to it by Act of July 2nd, 1864, and by the resolution of May 31st, 1870; that the company, on November 21st, 1871, filed in the office of the Commissioner of the General Land Office a map of definite location of the portion of its road from Thompson Junction to Fargo, and that on the 6th of July, 1882, it filed its map of definite location from Thompson Junction to a point near the City of Ashland, Wisconsin.

The answer denies that the railroad company at any time made a selection of the lands in Exhibit A of the bill, in compliance with the instructions of the Secretary of the Interior, or under his direction, or ever filed selections of the lands in accordance with the Act of July 2nd, 1864, or the resolution of May 31st, 1870, and denies that the selections made by the railroad company were at any time approved by the Secretary of the Interior, or the Commissioner of the General Land Office.

The answer also denies that there was any deficiency within the place limits of the grant which would require lands to be selected within the indemnity limits.

The answer puts the complainants to proof of all the other statements of the bill, relating to the complainants' alleged right or title to the lands.

It avers that the alleged lists filed by the railroad company were cancelled by the Secretary of the Interior and the Commission of the Land Office, and that the lands were made subject to entry and purchase by the Secretary of the Interior, and that the lands in Exhibit A in which the defendants are interested were duly and legally entered prior to January 1st, 1898, and certificates in the usual form were issued by the Land Department for some of the lands, and for others patents were issued.

It avers that the defendants were *bona fide* purchasers from the original locaters for value of the lands, without notice of any right or claim of the railroad company therein.

It avers that the Northern Pacific Railroad Company, and its successor, the Northern Pacific Railway Company, accepted the terms of the Act of Congress of July 1st, 1898, and of the circular of the Land Office of February 14th, 1899, for the adjustment by the Land Department of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company.

It avers that they have acted under said Act of July 1st, 1898, and said circular, and that they have made numerous relinquishments of lands thereunder, taking other lands in place thereof.

The defendants claim the lands under the provisions of the said Act of July 1st, 1898.

II.

The Regulations of the Secretary of the Interior for the Selection of Indemnity Lands.

The following are regulations provided for the observance of the Northern Pacific Railroad Company:

1st. Prior to May 28th, 1883, the railroad company was required, in making selection of indemnity lands, to furnish a list of the lands lost in place for which, tract for tract, indemnity lands were selected.

This appears by the instructions of Secretary Teller to the Commissioner of the General Land Office, May 28th, 1883, (12 L. D., 196,) referred to below, and in the decision of acting Secretary Chandler in Southern Minnesota Railway Extension Company, (12 L. D., 518,) and the decision of Secretary Smith in La Bar vs. Northern Pacific Railroad Co., (17 L D., 408, 409.)

2nd. The instructions of Secretary Teller to the Commissioner of the General Land Office, of May 28th, 1883, relating to the Northern Pacific Railroad Company, as follows:

"May 28th, 1883.

The Commissioner of the General Land Office:

Sir:—It is my desire to open for settlement, as speedily as possible, all the lands within the indemnity limits of the grant to the Northern Pacific Company not actually required to supply the lands lost in place within the granted limits.

The grant should be adjusted at the earliest possible time, *that the orders of withdrawal may be vacated without unreasonable delay,* as indicated in my letter of the 17th instant.

The unparalleled demand for lands for actual settlement by great numbers of persons, not only from foreign countries, but from the older states, seeking homes, under the settlement laws, along the line and in the vicinity of the Northern Pacific grant, requires, for the best interest of the country, and for all parties concerned, *that the withdrawals should not be maintained any longer than is actually necessary for the adjustment of the guaranteed rights of the company.*

In order to facilitate the work of making selections, I think you should instruct the local officers that, when clear lists of selections, free from conflict or other objection, are filed with the district officers and approved by them, said selections should at once be marked upon their books *and forwarded for final examination, leaving the ascertainment of the lands lost in place to your office, instead of requiring preliminary lists of such lands, together with the indemnity lands, tract for tract, from the company as heretofore.*

I am satisfied that the work of adjusting the grant will go forward much more rapidly under this plan than under the former practice.

Very respectfully,
H. M. TELLER,
Secretary."

(2 L. D., p. 196.)

3rd. The instructions of Secretary Teller to the Commissioner of the General Land Office, of July 11th, 1883, in addition to the instructions of May 28th, 1883, relating to the Northern Pacific Railroad Company, as follows:

"I call your attention to my letters of May 17 and 28 last, relating to the Northern Pacific land grant, and particularly to the indemnity part of such grant. * * * Under the authority conferred and in discharge of the duty imposed upon out by the Act, which provides that the selections shall be made under the direction of the Secretary of the Interior, I deem it best to indicate at the outset what, in my opinion, the practice should be in relation to selections. The amount of lands lost within each of the states named should be made up by selections within such State, *without regard to quality, if* there be sufficient within the indemnity limits for that purpose. *I do not think it was the intention of the granting Act, nor do I deem it just or equitable to the government, or to the settlers, to permit the company to cull the lands within such limits, leaving portions unselected because they are poor, and then selecting other lands farther along the line, in place of lands lost within the granted limits of those states.*"

The Public Domain, p. [illegible].

9th. Regulations for the adjustment of the railroad land grant stated to be in effect December 1st, 1883, and embodying regulations in force June 30th, 1883.

The Public Domain, p. [illegible] to [illegible], and Exhibit [illegible], Record pp. [illegible], [illegible].

Division V of these regulations is as follows:

"In the adjustment of grants for railroads the principle has, until recently, prevailed, that indemnity was allowed for all lands sold, reserved or disposed of within the granted limits, whether such sale, reservation or disposal occurred before or after the granting Act, and the certifications and patents have been executed in conformity thereto."

"In accordance with the recent decision of the Supreme Court in the case of the Leavenworth, Lawrence and Galveston Railroad Company vs. United States, (2 Otto, 733,) it is held by the department that indemnity can only be allowed for lands sold, reserved or disposed of in the granted limits by the general government after the granting Act and prior to the time when the railroad right attached, unless the grant be one of quantity specifically set forth in the Act. *In the adjustment of all grants it consequently becomes necessary to know for what lands lost in place the indemnity selections are made, and wih the view to that end you will require the companies to designate the specific tracts for which the lands selected are claimed."*

The Public Domain, p. 938.

5th. Railroad indemnity selections, circular of August 4th, 1885, as follows:

"Before admitting railroad indemnity selections in any case you will require preliminary lists to be filed specifying the particular deficiencies for which indemnity is claimed. You will then carefully examined your records, tract by tract, to ascertain whether the loss to the grant actually exists as alleged. You will admit no indemnity selection without a proper basis therefor. If you are in doubt whether the company is entitled to indemnity for losses claimed, you will transmit the preliminary lists to this office for instructions, and will not place the selections upon record until directed so to do."

"Where indemnity selections have heretofore been made without specification of losses, you will require the companies to designate the deficiencies for which such indemnity is to be applied before further selections are allowed."

"The selecting agent applying to make indemnity selections must state in his affidavit attached to the list presented that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner."

"Where deficiencies exist, for which indemnity is allowed by law, the lieu selections must be made from vacant unappropriated land within proper selections and limits *nearest the grant-*

ed sections in which the loss occurred. You will be careful to see that this rule is strictly complied with, *and will reject all selections not made in conformity thereto.*

Approved:

L. Q. C. LAMAR,
Secretary."

(4 L. D., p. 90.)
Exhibit N, Rec. pp. 763, 764.

6th. The directions of Secretary Smith to the Commissioner of the General Land Office of October 14th, 1893, as follows:

"It would seem that there is necessity for some positive action in the premises. Aside from the legal aspect of the case and the protection of the rights of adverse claimants, it will greatly facilitate the work of the adjustment of these grants, to exact compliance with the regulations heretofore prescribed in the matter of the selection of indemnity lands."

"I have, therefore, to direct *that you call upon all railroad companies having pending indemnity selections to revise their lists within six months from the date of your order, so that a proper basis will be shown for each and all lands now claimed as indemnity,* the same to be arranged tract for tract in accordance with departmental requirements, and that all tracts formerly claimed for which a particular basis has not been assigned, in the manner prescribed, at the expiration of said six months, be disposed of under the terms of the orders restoring indemnity lands without regard to such previous claim."

"The requirements of the order of August 4, 1885, *should also be enforced, and the companies should be required to specify a basis, not only for the selections now pending, but*

for all selections heretofore approved on account of which no previous loss has been assigned."

"This is as necessary to the protection of the interests of the United States, and as an aid in the adjustment of the grants, as the requirement of a specification of losses for pending selections, for without such designation on account of approved selections, *it cannot be ascertained whether a particular loss now assigned has not already been fully satisfied by previous approvals.*"

"To bind the companies they must make their own selections, which necessitates the statement of a basis on which such selections rest, and while they are to be made under the direction of the Secretary of the Interior, it is not contemplated that the work is thereby transferred and added to the duties of your office."

"The regulations in the matter of the selection of indemnity lands must, therefore, be strictly enforced, and if the losses assigned for previous approvals are carefully examined to the end that a good basis is shown to exist for each tract heretofore received as indemnity, and are not duplicated in the losses assigned for pending selections, the grants will practically adjust themselves."

La Bar vs. Northern Pacific R. R. Co., 17 L. D., 406 at 410.

III.

THE SELECTION LISTS.

The statements of the bill show that the selections of the lands upon which the complainants claim title were made on October 16th and November 10th, 1883, by lists numbered 10, and 15, which were not accompanied by any list or statement of lands lost in the place limits as a basis of the selection lists, and that these lists were not only not approved by the Secretary of the Interior, but that, on the contrary, in compliance with certain other and further instructions of the Secretary of the Interior, the railroad company filed in the District Land Office at Duluth, October 17th and November 9th, 1883, and October 10th, 1887, certain lists by which the railroad company specified *an equal quantity of lands lost* from the primary limits, equal in area to those lands described in the several selection lists.

The bill further shows that approval of the selections was not made upon filing these subsequent lists; on the contrary, it is stated that for the purpose of complying with "certain other and *further* directions and requirements of the Secretary of the Interior, *issued* subsequent to the dates of the original selection, the railroad company filed, in the District Land Office at Duluth, on June 9th, 1891, and *April* 11, 1893, certain re-arranged lists whereby the railroad company designated *the particular losses of lands within the primary limits,* in lieu of which it selected each tract of land described in the several indemnity selection lists hereinafter mentioned, and particularly each tract of lands described in said Exhibit A."

The statements of the bill further show that the selections *were not approved after the filing of these last re-arranged lists;* on the contrary, the bill states that the said selection lists, filed as hereinbefore alleged, and said lists of losses hereinbefore mentioned, were duly transmitted to the Commissioner of the General Land Office, and the same are now parts of the files of said office, *but that no action has ever been taken upon said lists, or upon the selection of said lands mentioned in said Exhibit A, except as hereinbefore and hereinafter set forth.*

There is nothing afterwards set forth in the bill of complaint upon the subject.

There is no statement that the lands selected either in the first indemnity limits or in the second indemnity limits *were nearest to the lands lost for which the selections were made.*

The only statement is that each of the tracts in the selection lists, and each of the tracts described in Exhibit A, was selected in lieu of a tract of corresponding size lost to the railroad company within the primary limits situated in the State of Minnesota.

The lists put in evidence by the complainants are the following Exhibits:

Exhibit 19, List No. 10, filed Oct. 18, 1883, p. 325.
Exhibit 20, List No. 10, filed Oct. 10, 1887, p. 332.
Exhibit 21, List No. 10, filed July 19, 1891, p. 346.
Exhibit 22, List No. 15, filed Oct. 18, 1883, p. 368.
Exhibit 23, List No. 15B, filed April 11, 1893, p. 379.
Exhibit 24, List No. 16, filed Oct. 18, 1883, p. 406.
Exhibit 25, List No. 16, filed April 11, 1893, p. 411.

The following facts in relation to these lists appear by the lists themselves, viz.:

1st. The requirement of the Secretary that "the selecting agent applying to make indemnity selections must state in his affidavit attached to the list presented that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner," was not complied with.

2nd. The selections of the indemnity lands were not made of lands nearest to the lands lost on account of which the selections are made.

3rd. The selections were not approved by the Secretary of the Interior.

IV.

The Circumstances Under Which the Controversy in Relation to the Lands Has Arisen.

On November 20th, 1871, the Northern Pacific Railroad Company filed a map of definite location of its road from Thompson Junction to Fargo.

It also, previous to that time (July 9, 1870,) had made an agreement with the Lake Superior and Mississippi Railroad Company, which had built a road from Thompson Junction to Duluth, to run its trains over that road to Duluth, making Duluth one of its principal points of trade and trans-shipment on Lake Superior.

On January 1st, 1872, a further agreement was made by which the Northern Pacific Railroad Co. purchased a one-half interest in the road, and the right to use it jointly with the Lake Superior & Mississippi Railroad Co.

Under these agreements the Northern Pacific Railroad Co. runs its trains to Duluth.

On the 6th of July, 1882, the company filed its map of definite location from Thompson Junction, by way of Superior City, to a point on Lake Superior east to Ashland.

In 1884, the board of directors fixed the eastern terminus of the road at Ashland, Thereafter the Commissioner of the General Land Office prepared a diagram, showing the terminus of the road at Ashland, and sent it to the district offices, with instructions to adjust the land grant on that basis.

The road from Thompson Junction to Superior City was constructed during the years 1881 to 1884.

It was constructed to Ashland, so that its construction was approved to that point in 1885.

After the instructions of October 14th, 1893, by the Secretary of the Interior to the Commissioner of the General Land Office were issued in the case of La Bar vs. Northern Pacific Railroad Company, (17 L. D., 410,) above quoted, requiring the railroad company to revise its lists within six months, tract for tract, showing the basis on which selections were made, and to comply with the circular of August 4, 1885, (4 L. D., 90,) and to which requirement no response was made by the railroad company, and on November 13, 1895, a selection of lands in North Dakota, based upon losses of lands in the primary limits in the Ashland district of Wisconsin, was presented for approval to the Secretary of the Interior.

He refused approval, holding that if the agreement made between the Northern Pacific Railroad Co. and the Lake Superior & Mississippi Railroad Co. constituted a consolidation of the roads from Thompson Junction to Duluth, then Duluth was the eastern terminus of the Northern Pacific Railroad.

But if the agreement did not constitute such a consolidation, then Superior City would be the eastern terminus of the road, and, in either case, the Northern Pacific Railroad Co. was not entitled to any lands east of Superior City.

August 27th, 1896, the Secretary of the Interior decided, upon the evidence presented before him, that there was a consolidation of the two roads from Thompson Junction to Duluth, and that Duluth was the eastern terminus of the Northern Pacific Railroad.

July 27, 1897, the Secretary of the Interior approved the action of the Commissioner of the General Land Office, in giving public notice that all lands lying east of the terminal at Duluth, which had heretofore been withdrawn on account of the grant to the railroad company, be restored to the public domain and subject to disposal.

Exhibit 30, Rec. pp. 429 to 431.

Under this action of the Secretary of the Interior, a large part of the lands in controversy were entered and purchased at the Land Office by the parties under whom the defendants claim the lands.

April 16th, 1900, the Supreme Court of the United States decided that the eastern terminus of the road was at the City of Ashland, Wisconsin.

Northern Pacific R. R. Co., 21 L. D., 412.
Northern Pacific R. R. Co., 23 L. D., 204.
Northern Pacific R. R. Co., 25, L. D., 47, 48.
Doherty vs. Northern Pacific R. W. Co., 177 U. S., 421.
United States vs. Northern Pacific R. Co., 177 U. S., 435

After the decision of the Supreme Court, and on July 12, 1900, the Secretary restored the selections made by the railroad company of these lands to the records of the Land Department for consideration of their approval, *and they now await his action to approve or disapprove them, according as he shall find the rights of the railroad company to be in relation to them.*

Complainants' Exhibits 31 and 32. R. pp. 431, 432.

Exhibit 45, R. pp. 491, 492.

In the mean time the Act of Congress of July 1st, 1898, was adopted, (30 U. S. Stat., 620, 621, 622,) providing for an adjustment of the respective claims of the railroad company, and the parties who, like the defendants, have acquired from the United States claims to the lands.

By this Act the election was given to such parties to retain the lands, and in case of their election to retain the lands, the railroad company is to release its claim thereto and take other lands in lieu thereof.

The railroad company accepted the terms of the Act on July 13th, 1898, and has ever since been acting under it, and the Land Department has been engaged in administering the Act.

The defendants claim the benefit and protection of said Act.

V.

The Act of July 1, 1898.
30 U. S. Stat., 620, 621, 622.

By the terms of the Act of July 1st, 1898, and the acceptance of the Act by the Northern Pacific Railway Company, the complainants are not entitled to the lands in question which were purchased, settled upon, or claimed in good faith by the defendants or their assignors prior to January 1st, 1898.

30 U. S. Stat., 620, 621, 622.

This Act provides, "That where, prior to January 1, 1898, the whole or any part of an odd numbered section in either the granted or the indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of the grantee, or its lawful successor, is claimed to have attached by definite location or selection, has been purchased directly from the United States or settled upon or claimed in good faith by any quaified settler under color of title or claim of right under any law of the United States, or any ruling of the Interior Department, and where purchaser, settler or claimant refuses to transfer his entry as hereinafter provided, the railroad grantee, or its successor in interest, upon a proper relinquishment thereof, shall be entitled to select, in lieu of the land relinquished, an equal quantity of public lands, surveyed or unsurveyed * * * situated within any State or territory into which said railroad grant extends, and patents shall issue for the lands so selected as though they had been originally granted."

The Act further provides, "That the Secretary of the Interior shall, from time to time, ascertain, and, as soon as conveniently may be done, cause to be prepared and delivered to the said railroad grantee, or its successor in interest, a list or lists of the several tracts which have been purchased or settled upon, or occupied as aforesaid, and are now claimed by said purchasers or occupants, their heirs or assigns, according to the smallest government subdivision. And all right, title and interest of said railroad grantee, or its successor in interest, in and to any of such tracts, which the said railroad grantee, or its successor in interest, may relinquish hereunder, shall revert to the United States, and such tracts shall be treated, under the laws thereof, in the same manner as if no rights thereto had ever vested in the said railroad grantee, and all qualified persons who have occupied and may be on said lands as herein provided, or who have purchased said lands in good faith as aforesaid, their heirs and assigns, shall be permitted to prove their titles to said lands according to law, as if said grant had never been made; and upon such relinquishment said Northern Pacific Railroad Company, or its lawful successor in interest, may proceed to select, in the manner hereinbefore provided, lands in lieu of those relinquished, and patents shall issue: Provided, further, That the railroad grantee, or its successor in interest, shall accept the said list or lists so made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it, but it shall not be bound to relinquish lands sold or contracted by it, or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron or coal."

The Act further provides that all qualified settlers, their heirs or assigns, who, prior to January 1st, 1898, purchased or settled upon or claimed in good faith any part of an odd numbered section in either the granted or indemnity limits of the land grant, "may, in lieu thereof, transfer their claims to an equal quantity of public lands surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron or coal, and free from valid adverse claim, or not occupied by a settler at the time of such entry, situated in any State or territory into which such railroad grant extends, and make proof therefor as in other cases provided; * * * and before the Secretary of the Interior shall cause to be prepared and delivered to said railroad grantee, or its successor in interest, any list or lists of the several tracts which have been purchased or settled upon or occupied as hereinbefore provided, he shall notify the purchaser, settler or claimant, his heirs or assigns, claiming against said railroad company, of his right to transfer his entry or claim, as herein provided, and shall give him or them option to take the lieu lands for those claimed by him or them, or hold his claim and allow the said railroad company to do so under the terms of this Act."

On July 13th, 1898, the Northern Pacific Railway Company accepted the provisions of said Act, by formal resolution filed in the Department of the Interior.

(Exhibit L., R. p. 758.)

On February 14th, 1899, the Secretary of the Interior issued regulations for the carrying out of the provisions of the Act, in pursuance of its terms.

(Duluth Ex. K., R. p. 737.)
28 L. D., 103 to 118.
28 L. D., 470, 471.

The conveyance from the Northern Pacific Railway Company to the complainants of the lands in question was made January 26th, 1900.

(Ex. No. 50, R. p. 499.)
(Ex. No. 51, R. p. 503.)

1st. By the acceptance of the Act, and upon its acceptance by the Northern Pacific Railway Company the rights of the railway company were limited to selecting other lands in lieu of the lands described in Exhibit A of the bill, which were purchased, settled upon or claimed in good faith under color of title, or claim of right, under any law of the United States, or any rulings of the Interior Department, prior to January 1st, 1898, which the purchasers, settlers or claimants should elect to hold

It is not a question here whether the Northern Pacific Railway Company may have refused to accept the provisions of the Act, or might have claimed the right to stand upon the grant of July 2nd, 1864, and May 31st, 1870, and what in such case its rights would have been.

The railway company waived and yielded up the right so to do, and assented to and accepted the terms of the *Act* of July 1st, 1898, and the rights granted by that *Act*, in the place and stead of its right to insist upon the terms of said *Act* of July 2nd, 1864, and May 31st, 1870, and claim the lands which were claimed by the purchasers, settlers and claimants described in said *Acts*.

The United States made to the Railway Company, by the *Act* of July 1st, 1898, the offer of the right to select other lands situated in any state or territory into which its railroad grant extends without any limit within which its selection should be made, other than the limits of such states and territories, in lieu of the lands claimed by the purchasers, settlers and claimants, and without reference to the validity of the claims of the latter.

The acceptance of this offer by the railway company constituted a valid contract between the United States and the railway company, and left the United States free to deal with such purchasers, settlers and claimants.

The question here is, what are the rights of the railway company under the terms of the Act of July 1st, 1898?

The provisions of the *Act*, stated in the order in which they are to be carried out, require:

First. That the Secretary of the Interior "shall notify the purchaser, settler or claimant, his heirs or assigns, claiming against said railroad company, of his right to transfer his entry or claim, as herein provided, and shall give him or them option to take lieu lands for those claimed by him or them, or hold his claim and allow the said railroad company to do so under the terms of this act."

Here is distinctly granted to the purchaser, settler or claimant, his heirs or assigns, the absolute option to either take lieu lands for the lands claimed by them, or to hold their claims and allow the railroad company to take lieu lands for such lands.

Second. The *Act* requires that after the Secretary shall have given such option to the purchaser, settler or claimant, his heirs or assigns, the Secretary "shall, from time to time, ascertain, and, as soon as conveniently may be done, cause to be prepared and delivered to the said railroad grantee, or its successor in interest, a list or lists of the several tracts which have been purchased or settled upon or occupied as aforesaid, and are now claimed by said purchasers or occupants, their heirs or assigns, according to the smallest government subdivisions."

Third. The *Act* requires, "*That the railroad grantee, or its successor in interest, shall accept the said list or lists so to be made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it, but it shall not be bound to relinquish lands sold or contracted by it, or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron or coal.*"

Fourth. The *Act* says: "That upon such relinquishment said Northern Pacific Railroad Company, or its lawful successor in interest, may proceed to select, in the manner hereinbefore provided, lands in lieu of those relinquished, and patents shall issue therefor."

Fifth. The *Act* says: "The railroad grantee, or its successor in interest, upon a proper relinquishment thereof, shall be entitled to select, in lieu of the land relinquished, an equal quantity of public land, surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron or coal, and free from valid adverse claim, or not occupied by settlers at the time of such selection, situated within any State or territory into which such railroad grant extends, and patents shall issue for the lands so selected as though it had been originally granted."

Briefly, the Act gives the absolute option to the purchasers, settlers or claimants, their heirs or assigns, to hold their claims to the lands. The Secretary of the Interior is to furnish the railway company a list of the lands which are thus claimed. That list is to be conclusive of the lands which the railway company is required to relinquish, except as to lands sold or contracted by it, or which it needs for railroad purposes, or is valuable for stone, iron or coal, and in the place of such lands it is to select other lands.

Having accepted the Act, the railway company has no option or election as to lands which it is to relinquish. *The only option given by the Act in respect to these lands is the option expressly given to the purchaser, settler or claimant.*

There is no provision in the Act for any election to be made by the railroad company as to whether it will or will not relinquish any land.

If any of the purchasers, settlers or claimants elect to retain the lands, the railroad company is required to relinquish them. It can in no manner control or interfere with the election of the purchaser to hold the lands. *The railroad company exercised its option when it elected to accept the provisions of the Act of July* 1st, 1898.

2nd. The right of the defendants to the lands in question is not defeated by the conveyance of the lands by the railway company to the complainants.

The conveyance was made to the complainants after the company had accepted the Act, and after the Secretary of the Interior had issued his regulations for carrying out its provisions.

(Exhibits 50 and 51, R. pp. 499 and 503.)
(Exhibit K., R. p. 737.)
28 L. D., 103.

The provision of the Act that the railway company *"shall not be bound to relinquish lands sold or contracted by it,"* refers to lands sold or contracted to be sold at the date of the passage of the Act.

By its acceptance of the Act, the railway company *gave its express assent that the purchasers, settlers and claimants should have the right to elect to hold all the lands which had not then been sold or contracted to be sold.*

The complainants' construction of the Act and its acceptance is this:

That the railway company assented that the purchasers, settlers and claimants should have the right to elect to hold such of the lands as the railway company should not elect to sell or contract to sell, and that the railway company assented to accept the right to select throughout the various states and territories into which its grant extended, lands in place of those lands which it should not choose to sell, and which the purchasers, settlers and claimants might elect to hold.

The complainants' construction of the Act gives it the opportunity to prevent the purchasers, settlers and claimants from having any opportunity or option to retain or hold any of the lands. It leaves to the purchasers, settlers and claimants only the right to elect to take such of the lands as the railway company should not wish to retain.

In other words, the complainants' construction would confer upon the railway company the right to exclude the purchasers, settlers and claimants from any option or opportunity to hold any of the lands which the railway company did not wish them to hold, and leaves them only the option to take such lands as the railway company wanted to get rid of taking under the grant and to have exchanged for lands to be selected by it throughout the wide domain of all the states and territories into which its grant extended.

If this construction be adopted, the purchaser, settler and claimant are deprived of the option to retain or relinquish the lands, which option is expressly given to them by the terms of the Act.

We submit the complainants' contention is a manifest violation of the terms and intent of the Act, and enables it to defeat the operation of the Act. The Act was intended for the relief of the purchasers by giving them an opportunity to retain the lands which had not been sold or contracted to be sold at the time the Act was passed, giving the railway company an opportunity to select from a wide domain other lands in place of them.

Under the complainants' construction the railway company would have no interest in the prompt carrying out of the provisions of the Act. The longer the delay of the Secretary of the Interior in carrying out the provisions of the Act and in giving the opportunity or option to the purchasers, the greater would be the opportunity to the railway company to make sale and contracts of sale of the lands which it desired to take from the settler.

It will be observed that by the regulations no act is required of the purchasers who wish to retain the lands, other than to retain them. There is nothing for them to do but to hold their claims.

Regulations 15, 17, 18, 20, 21, R. pp. 745, 746.
28 L. D., pp. 109, 110.

Regulation 20 is as follows:

"In all cases where the individual claim has passed to final entry and certificate, or to the submission of final proof entitling the claimant to final entry and certificate, proof of the continued maintenance of the claim is not essential, but a failure to exercise such option within the time named will be deemed an election on the part of the individual claimant to hold the land in contest."

The failure of the Secretary of the Interior to furnish to the Northern Pacific Railway Company a list of these lands in pursuance of the Act, furnished no ground to the company to make conveyance of the lands. It is not shown that the Secretary did not act with as much promptness as the business of his department would permit. There is no showing that the railway company has ever sought to have such list furnished, or has in any manner endeavored to hasten the action of the Secretary, as certainly it might have done had there been any ground to urge more speed. But the delay in furnishing such list, if there was any delay, in no way changed or affected the rights of the purchasers, settlers and claimants under the Act.

Oregon & Cal. R. Co. vs. United States, 189 U. S., 116.

In the above case the grant made in 1870 to the railroad company required that "the Commissioner of the General Land Office shall cause the lands along the line of the said railroad to be surveyed with all convenient speed." The final survey was not approved until 1893. In 1891 a homesteader settled upon some of the indemnity lands. The controversy was as to his right. In deciding the case the Court say (p. 118): "The railroad company rests its claim to have a superior right to these lands on the ground, in part, of long delay by the Commissioner of the Land Office in having them surveyed, although it frequently requested the survey to be made. There is nothing of substance in this contention. The statute, it is true, required the lands to be surveyed with all 'convenient speed.' But the question as to the precise time the lands should be surveyed was exclusively for the Land Office to determine; and it was to be determined with reference to all the facts and circumstances connected with the surveying of the public lands under the direction of the Land Department. We can not say from the record that the Land Office, in the matter of surveying the particular lands here in dispute, did not act with convenient speed. Besides, the railroad company accepted the grant of Congress subject to the possibility of delay in the surveying, as well as the power of the Land Office to determine when the lands should be surveyed."

It is equally clear than when the Northern Pacific Railway Company accepted the provisions of the Act of July 1, 1898, the acceptance was subject to the possibility of such delay as might occur in furnishing to it, by the Secretary, the lists of lands which the claimants would elect to hold, and which the railway company would be required to release.

3rd. The complainants' contention that if their construction of the Act is not accepted it will be impossible for the Northern Pacific Railway Company to convey a marketable title to any of its lands until the whole grant is adjusted under said Act.

The precise question in this case is whether by the conveyance made by the Northern Pacific Railway Company to the complainants on January 26, 1900, after the Secretary of the Interior had issued his regulations for carrying out the provision of the Act and was engaged in making the adjustment under the Act, these defendants are deprived of the benefits of its provisions.

To what extent lands have been purchased, settled upon, or are claimed, in addition to the claims of these defendants, does not appear by any evidence in the case. The statement of the complainants upon that subject is entirely an assumption, with no evidence for its support.

When the Act of July 1, 1898, was passed the public records of the Land Department showed that the selections of these lands by the railroad company, under which the complainants claim them, had not been approved by the Secretary of the Interior, and showed that the lands, after such selections had been made, had been expressly opened by the Secretary of the Interior to entry, and that prior to January 1st, 1898, the entries of these lands had been made by the parties under whom these defendants have their title. There is no evidence in the record *that any other lands have been purchased, settled upon or are claimed under such conditions.*

These defendants upon those facts have a strong equitable claim upon the government for their protection. It is beyond question that the Act was intended for their protection.

When, immediately after the passage of the Act, it was accepted by the Northern Pacific Railway Company, that company had knowledge of these facts, and with that knowledge made its acceptance of the Act. Did it, when it accepted the Act, intend that the defendants should not have the benefit of its provisions?

It can not plead ignorance of the fact that these particular lands were opened to the public for entry by the Secretary of the Interior, nor that they had been entered by the defendants' grantors, for these facts were matters of record.

This case is to be determined by its own circumstances and conditions, and its decision will control only such cases as present like facts.

The assumption that the railway company will be deprived of the opportunity to sell *any* lands is groundless. It will be deprived of the opportunity to sell lands purchased, settled upon or claimed under the same conditions and circumstances under which these lands are claimed, and it ought to be so deprived. Whether there are any other such cases is a fact easily to be determined by the railway company by an examination of the public records.

In all cases under the Act the Secretary of the Interior is to make a list of the lands, and he is to notify the purchaser, settler or claimant, and give him or them an option to take lieu lands or hold his claim.

The railroad company has the same means of knowledge which the Secretary of the Interior has as to what lands are claimed, and it does not need to wait for the adjustment in respect to these lands in order to make sale of other lands which fall under the grant.

4th. As the railway company had no right to convey the lands to complainants and defeat the operation of the Act as to the defendants, the complainants get no greater rights to the lands than the Northern Pacific Railway Company itself had.

The defendants' rights remain unaffected by such conveyance.

5th. The bill of complaint admits that the defendants acquired their rights to the lands in such manner as would entitle them to the benefit of the provisions of the Act of July 1st, 1898.

The bill says, paragraph XII, pages 11 and 12 of the record, as follows:

"Your orators further allege that but for the vested rights of the said Northern Pacific Railroad Company and its grantees in the several tracts of land described in Exhibit A, the said lands would, at the several dates of the respective alleged entries thereof, described in said Exhibit A, have been unappropriated public lands of the United States, open to the several kinds of entries or location, made or pretended to be made with respect to them, severally, as shown in Exhibit A, and that the several applications and proceedings with respect to the said several entries were (in) due form and regularly conducted, as required by law, and in the absence of the vested rights of the said Northern Pacific Railroad Company and its grantees in the said premises, would have been operative and effectual to invest the several entryman of said lands *with complete equitable title thereto*, each of such entries and locations having been finally receipted for, allowed and approved by the proper land officers of the United States."

6th. The complainants' contention that the acceptance of the Act of July 1st, 1898, by the Northern Pacific Railway Company did not include the lands in Minnesota and therefore did not cover the lands in controversy.

The Northern Pacific Railway Company accepted the Act of July 1st, 1898, on July 13th, 1898, *in its entirety*.

(See defendants' Exhibit L., R. p. 758.)

It could not accept the Act in any other way. It could not accept it in part and not in the whole.

If at the time of this acceptance it was intending to acquire title to the grant, but had not yet obtained title, it would clearly, after acquiring the title, have been bound by the Act.

Again, had it at the time of the acceptance acquired title to a part of the lands but not to all of them, it would be as clearly bound by its acceptance, both as to the lands then acquired and also to those subsequently obtained. It would not have been necessary to repeat its acceptance of July 13th, 1898, as to subsequently acquired lands.

The acceptance was certainly made with the intent and purpose on the part of the Northern Pacific Railway Company to be bound by the Act in reference to the lands as the Northern Pacific Railroad Company would be bound by its own acceptance of the Act had it accepted it instead.

In respect to the relations of the Northern Pacific Railway Company to the grant at the time of its acceptance of the Act, the bill of complaint says (paragraph IX. R. p. 8) that, "*during the year* 1898 all the rights, interests and ownership in the lands described in said Exhibit A. which had been heretofore owned or enjoyed by the said Northern Pacific Railroad Company, were duly sold, conveyed and transferred to the Northern Pacific Railway Company."

The Act of July 1st, 1898, by its express terms, includes and applies to the successor of the Northern Pacific Railroad Company, whoever such successor might then be, or thereafter might become. The Act had in view the Northern Pacific Railway Company as such successor, which company was then existing, and had been formed for the purpose of becoming such successor. By a proviso the Act says "the legal question whether the *Northern Pacific Railway Company* is such successor of the Northern Pacific Railroad Company, should the question be raised, shall be determined wholly without reference to the provisions of this Act."

It thus appears by the Act that at its passage the Northern Pacific Railway Company was in contemplation as the successor in interest, leaving the question upon the evidence showing its successorship to be determined by the Land Department.

February 6th, 1897, prior to the passage of the Act, the Secretary of the Interior had referred the question to the Attorney General in respect to issuing patents to the Northern Pacific Railroad Company's land grant to the Northern Pacific Railway Company, and under that date the Attorney General replied that, "In 1896 the mortgages so issued were foreclosed and all the property, rights and franchises of the company were sold at judicial sale to the Northern Pacific Railway Company, a Wisconsin corporation, which purchaser has entered into possession and claims ownership of the railroad and telegraph lines, lands and property of the Northern Pacific Railroad Company." The Attorney General further states to the Secretary of the Interior as follows: "You should act upon applications for patents by the new company upon exactly the same considerations which would govern you in case there had been no foreclosure and the applications were made by the old company."

(21 Official Opinions of Attorneys General, pp. 488, 491, Vol. 69, House Documents.)

The regulations of the Secretary of the Interior for carrying out the Act, issued February 14th, 1899, declared the

Northern Pacific Railway Company to be the successor in interest as to the lands within limits of the Northern Pacific Railroad Company's grant, excepting lands situated in Minnesota and North Dakota east of the Missouri River.

28 L. D., 105.
R. p. 741.

The Secretary of the Interior, *on August* 8th, 1899, approved a list of lands in Minnesota *for relinquishment under the Act of July* 1st, 1898. These lands are a part of the lands included in the conveyance by the Northern Pacific Railroad Company to the Northern Pacific Railway Company, by complainants' Exhibit 43 (R. p. 478), under which the complainants claim that title to the lands was conveyed to the Northern Pacific Railway Company. *The Northern Pacific Railway Company sought to make relinquishment under the Act of* 1898, *of the lands in this list* Acting upon this election of the Northern Pacific Railway Company, the Secretary of the Interior decided that the Northern Pacific Railway Company was the lawful successor in interest "as to all the lands within the limits of the grant provided for in the Acts making grants to the Northern Pacific Railroad Company," and permitted relinquishment to be made by the Northern Pacific Railway Company.

Northern Pacific Railway Co., 29 L. D., 316, 317, 318.

The record in this case, by Exhibit H, pp. 665, 666. 667, also shows that the Northern Pacific Railway Company released lands in Minnesota under said Act of July 1, 1898, as the successor of the Northern Pacific Railroad Company, *which release was accepted November* 21, 1899, prior to the conveyance to the complainants, by the Secretary of the Interior, and for such release the Northern Pacific Railway made a selection of other lands by said Exhibit H.

This action of the Northern Pacific Railway Company shows that the company was acting under the provisions of the Act in reference to the lands covered by the grant in Minnesota, and under its acceptance of the Act of July 1st, 1898, *prior to the conveyance of the lands in question by the Northern Pacific Railway Company to the complainants, which conveyance was on January* 19, 1900.

(Exhibits No. 50 and 51, R. pp. 499 and 503.)

The action of the Northern Pacific Railway Company shows that having accepted the provisions of the Act and acted under those provisions, it has undertaken to decide for itself what lands it will relinquish under the Act, and what lands it will not relinquish, *by conveying to other parties such of the lands as it desires to prevent the purchasers and settlers from exercising their option to hold.*

7th. The persons who are entitled to the benefits of the Act.

There are three classes of these persons, viz.: Those who had purchased the lands directly from the United States, those who had settled upon the land in good faith under color of title or claim of right under any law of the United States, or any ruling of the Interior Department, and those who claimed the lands in good faith under color of title or claim of right under any law of the United States or any ruling of the Interior Department.

The provisions of the Act are not confined to actual settlers, as contended by the complainants.

The first provision, describing the parties affected by the Act is: "That where, prior to January 1st, 1898, the whole or any part of an odd numbered section, in either the granted or the indemnity limits of the land grant to the Northern Pacific Railroad Company, * * * * *has been purchased directly from the United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department, and where purchaser, settler or claimant* refuses to transfer his entry as hereinafter provided," the railroad company may relinquish the land and select other lands.

The second provision of the Act for making the list of lands to be relinquished by the railroad company is, "That the Secretary of the Interior shall from time to time ascertain and, as soon as conveniently may be done, cause to be prepared and delivered to the said railroad grantee, or its successor in interest, a list or lists of the several tracts which have been *purchased or settled upon or occupied as aforesaid,* and are now claimed by said purchasers or occupants, their heirs or assigns, according to the smallest government subdivisions."

The third provision relating to the persons who may prove their title to the lands relinquished by the railroad company is that, "all qualified persons who have occupied and may be on said lands as herein provided, *or who have purchased said lands in good faith as aforesaid,* their heirs and assigns, shall be permitted to prove their titles to said lands according to law, as if said grant had never been made." The provision for giving the option to claimants is as follows: "Before the Secretary of the Interior shall cause to be prepared and delivered to said railroad grantee, or its successor in interest, any list or lists of the several tracts *which have been purchased or* *settled upon or occupied as hereinbefore provided,* he shall notify the *purchaser, settler or claimant,* his heirs or assigns, claiming against said railroad company, of his right to transfer his *entry or claim.*"

It would be difficult to make language more plainly include purchasers and claimants of the land as well as settlers upon the land. If only settlers were intended there would have been no occasion to make use of the term "purchaser" or claimant.

There is one provision of the Act referring to settlers which does not include purchasers or claimants. It is a provision relating to unsurveyed lands and settlements made upon them subsequent to the date of the Act. It is as follows:

"That whenever *any qualified* settler shall in good faith make settlement in pursuance of existing law upon any odd numbered sections of unsurveyed public lands within the said railroad grant to which the right of such railroad grantee, or its successor in interest, has attached, then upon proof thereof satisfactory to the Secretary of the Interior, and a due relinquishment of the prior railroad right, other lands may be selected in lieu thereof by said railroad grantee, or its successor in interest."

From this provision "purchasers" and "claimants" are left out, because it was intended to limit the provision to settlers upon the lands.

It is equally clear that the term "purchaser" and "claimant" are used in the other provisions of the Act because it is not intended to limit those provisions to settlers upon the lands.

8th. The date at which the rights to the benefits of the provisions of the Act of July 1, 1898, became fixed.

It is not in any case the date of the patent issued to the claimant. The issue of the patent is an immaterial factor.

If the beneficiary under the act is simply as purchaser his right to the benefits of the act are fixed at the date when his purchase is made. If he is a settler upon the land his right to the benefits of the act is fixed at the date when he settled upon the land in good faith under the permission given by the homestead law, or other statute If he is a claimant of the land, not in the character of a mere purchaser or settler, his right to the benefits of the act is fixed at the date when in good faith he made his claim to the land under color of title or claim of right under any law of the United States, or any ruling of the Interior Department.

A. That is the construction of the Act by the Secretary of the Interior in the regulations adopted by him for carrying out the provisions of the Act.

His statement is that a beneficiary under the Act is, "any qualified person who, prior to January 1. 1898, by settlement, entry or purchase, *initiated* in good faith a claim to lands, of the description given, under color of title or claim of right under any law of the United States, or any ruling of the Interior Department, and who is still maintaining such claim conformably to such law or ruling."

(Record p. 740.)

This is also clearly the meaning of the language of the Act which defines the acts which constitute a beneficiary. The language is, "where, prior to January 1, 1898, the whole, or any part of an odd numbered section * * * has been *purchased* directly from the United States, or *settled upon* or *claimed* in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Deprtment, and where *purchaser, settler* or *claimant* refuses to transfer his entry as hereafter provided."

B. When one makes an entry of land for its purchase and pays for the land *he becomes then a purchaser* of the land. The issue of a patent is not required to constitute him a purchaser. In fact, when a purchase of land is made, in whatever manner as authorized bv statute, the patent does not issue until much time, and sometimes for years, thereafter, meanwhile the land belongs to him who is entitled to the patent. He is the purchaser and owner of the land.

Witherspoon vs. Duncan, 4 Wall., 210, at 218.
Defferback vs. Hawke, 115 U. S., 392, at 405.
Cornelius vs. Kessel, 128 U. S., 456, at 460.
Orchard vs. Alexander, 157 U. S., 372, at 383.
Clark vs. Herington, 186 U. S., 206, at 211.

In Witherspoon vs. Duncan, 4 Wall., 210, at 218, Harrell's heirs, on May 22, 1830, entered land and a certificate of entry was transmitted to the General Land Office, but a patent was not issued until February 5, 1846. The question in the case was whether the land was subject to taxation *as private property before the issue of the patent.* The Court holding the land subject to taxation say (p. 218): "According to the well known mode of proceeding at the land offices (established for the mutual convenience of buyer and seller), if the party is entitled by law to enter the land, the receiver gives him a certificate of entry reciting the facts, by means of which, in due time, he receives a patent. The contract of purchase is complete when the certificate of entry is executed and delivered, and thereafter the land ceases to be a part of the public domain. The government agrees to make proper conveyance as soon as it can, and in the meantime holds the naked legal fee in trust for the purchaser, who has the equitable title. As the patent emanates directly from the President, it necessarily happens that years elapse before, in the regular course of business in the General Land Office, it can issue."

This decision has been many times referred to and approved by the Court. It is entirely clear under the authorities that in administering the Act of July 1, 1898, the Secretary of the Interior, in determining whether "land has been purchased 'prior to January 1, 1898, *is to be governed by the date when the purchase was made.* The inquiry is to be as to when the purchase was made, and not when the patent was issued, nor *whether a patent has issued.* Under the known practice of the Land Department, (of which the Court takes notice,) the patent is itself evidence that the purchase was made at some time prior to the date of the patent. The date of the purchase and the date of the patent are never the same. The purchase is made at the local Land Office, and upon report from that office to the General Land Office the patent issues from that office.

C. The issue of the patent does not exclude from the provisions of the act an entry made prior to January 1, 1898 as contended by complainants.

The object of the Act is the relief of the purchasers, settlers and claimants from the position in which they are placed by having purchased from the United States, or by having settled upon or claimed in good faith under color of title or claim of right under any law of the United States, or any ruling of the Interior Department, within the grant or indemnity limits of the land grant of the Northern Pacific Railroad Company.

It is the fact of purchase and of settlement and claim in good faith, which constitutes the ground for relief, and not the fact whether the purchase or settlement is evidenced by patent.

The jurisdiction of the Land Department under the Act is only to determine whether the claimant is such purchaser or settler.

The jurisdiction is not to determine the validity of the title acquired. It is the purpose of the Act to render unnecessary the decisions upon the validity of the title. There is no provision in the Act for the determination to be made under the Act of the company's right to the lands. The simple fact that the land is upon an odd numbered section within the grant or indemnity limits of the grant, and that it has been purchased, settled upon or claimed, and the purchaser, settler or claimant elects to hold his claim, authorizes the railroad company to relinquish the land and select other lands to stand in its stead.

It is only after the relinquishment of the lands to the United States by the railway company has been made, that the Act provides for the claimants making proof of their titles to the lands.

Upon the application of the Northern Pacific Railroad Company lands which had been entered before January 1, 1898, for which patents were issued *after* January 1, 1898, were directed to be treated, by the Secretary of the Interior, as covered by the provisions of the Act of July 1, 1898.

(See Regulations, 28 L. D., 470, 471.)

This action was taken June 3rd, 1899, upon the application of the Northern Pacific Railroad Company before its conveyance to the Northern Pacific Railway Company of the lands in Minnesota, which conveyance was made December 21st, 1899.

(Exhibit No. 43, R. p. 478.)

It is submitted that a Court of Equity will not hold that a person who, by purchase of land prior to January 1, 1898, acquired the right under the statute of July 1, 1898, to hold the land, *lost his right to the land by the after issue of a patent to him, and that he holds such patent in trust for the railway company.*

D. The lands entered under the Timber and Stone Act.

This statute provides that a person, to avail himself of the provisions of the Act, shall file with the Register a written statement, in duplicate, to be verified by his oath, one of which is to be transmitted to the General Land Office, designating the particular tract he desires to purchase, and containing the statements required by the statute to be set forth. Upon filing the statement, the Register is to post in his office, for sixty days, a notice of the application, and the applicant is to cause a copy of such notice to be published for a like period of time in a newspaper published nearest to the land, and furnish to the Register, after such period, proof of the publication and proof of the character of the land, and upon payment to the proper officer of the purchase money of said land, and the fees of the Register and Receiver, "*the applicant may be permitted to enter said tract, and on the transmission to the General Land Office of the papers and testimony in the case a patent shall issue thereon.* Provided, that any person having a valid claim to any portion of the land may object, in writing, to the issuance of a patent to lands so held by him, stating the nature of his claims thereto, and evidence shall be taken, and the merits of said objection shall be determined by the officers of the Land Office, subject to appeal, as in other land cases."

2 Comp. Stat. 1891, p. 1545.
20 U. S. Stat. pp. 89, 90.
Amended 27 U. S. Stat. p. 348.

A person becomes a beneficiary under this statute when his entry of the land is made prior to January 1, 1898, although "the papers and testimony in the case" may not be transmitted to the General Land Office until after January 1, 1898. He *may settle upon the land upon such an entry and hold the land as purchaser or settler or claimant.*

E. Lands acquired under the Homestead Law.

This statute requires the applicant to make and file in the proper land office the verified declaration required by the terms of the Act, "and upon filing such affidavit with the Register or Receiver, on payment of five dollars when the entry is not of more than eighty acres, and on payment of ten dollars when the entry is of more than eighty acres, he or she *shall thereupon be permitted to enter the amount of land specified.*"

No certificate or patent shall be issued until five years from the date of such entry, and at the expiration of the five years, or within two years thereafter, upon proof of the facts of residence upon the land and other facts required by the statute, the homesteader "shall be entitled to a patent as in other cases provided by law."

The law further provides that a party who has entered the land under the homestead law may pay the minimum price for the land at any time after fourteen months from the date of such entry, upon making proof of settlement, residence and cultivation for such period of fourteen months.

2 Comp. Laws, 1901, pp. 1388, 1389, 1390, 1406, 1410.

Revised Statutes U. S., Secs. 2289, 2290, 2291, and 2301, as amended 26 U. S. Stat., pp. 1098, 1099, Chap. 561.

Under this statute a party becomes entitled to the benefits of the Act of July 1, 1898, when he enters the land, by filing in the land office the required affidavit and settles upon the land in pursuance of such entry prior to January 1, 1898, whatever part of the five years may remain to be completed after January 1, 1898. He also is entitled to the benefits of said Act if, having made the entry and settlement prior to July 1, 1898, he continues his settlement and to improve and cultivate the land for the period of fourteen months and then pays the minimum price of the land, although such payment be made after January 1, 1898. By his entry and settlement he became entitled to the land by either a residence on the land, and cultivation for five years, or by settlement, cultivation and improvement for fourteen months and payment of the minimum price. His entry and settlement, cultivation and improvement for fourteen months gave him a right to the land on payment of the minimum price. His payment may be made by scrip as well as by money.

2 Comp. Laws 1901, p. 1514.

20 U. S. Stat. p. 274, 275, Sec. 2, 3, 4.

In administering the Act of July 1, 1898, the inquiry of the Secretary of the Interior would be whether the entry and settlement were made prior to January 1, 1898.

It is the fact that the land has been settled upon or claimed in good faith under color of title or claim of right under any law of the United States prior to January 1, 1898, which entitles him to the benefit of the Act.

The declaration filed by him in the local land office under the provisions of the homestead law authorizes his settlement upon the land and constitutes his color of title. He has a fixed claim of right to the land. So, also, the entry made under the Timber and Stone Act constitutes a color of title and claim of right to one who settles upon or claims the land in good faith under such entry.

> **Nelson vs. Northern Pacific Railway Co., 188 U. S., 108, at 121, 122.**
>
> **Sturr vs. Beck, 133 U. S., 541, at 548.**
>
> **Bardon vs. Northern Pac. Railroad Co., 145 U. S., 535, at 539, 540.**
>
> **Whitney vs. Taylor, 158 U. S., 85, at 92.**
>
> **Hastings, &c., R. Co. vs. Whitney, 132 U. S., 357, at 363.**

In Nelson vs. Northern Pac. Railway Co., 188 U. S., 108, Nelson settled upon unsurveyed land prior to the definite location of the line of the railroad. When the land was surveyed he applied to enter it under the homestead laws, but was refused because, in the opinion of the local land officers, it conflicted with the grant to the Northern Pacific Railroad Co. The railroad company obtained a patent for the land and brought suit to recover it from Nelson. Deciding the case against the railway company, the Court held (pp. 121, 122,) that Nelson's settlement upon the land with intent in good faith to acquire it as a homestead, constituted "*a claim upon the land*" within the meaning of the grant of 1864 to the railroad company of the alternate odd sections to which the United States had full title "and free from pre-emption *or other claims or rights*, at the time the line of the road is definitely fixed."

If such a settlement upon land constituted a claim at the time the definite line of the railroad was fixed within the Act of 1864, a settlement upon land under a homestead declaration, or entry under the Timber and Stone Act prior to January 1, 1898, must constitute a claim within the Act of July 1, 1898, and bring the claimant within its protection, although the final evidence of title be not given till after January 1, 1898.

F. Lands located with scrip under the acts referred to in the bill of complaint. (Rec. p. 10.)

The Acts are Chapter 81 of 11 U. S. Stat., p. 294, and Chapter 83 of 10 U. S. Stat., p. 304.

Under the first of these statutes the person entitled to locate land makes application for land at the local land office. The Register enters the location and makes out for "such claimant, or his legal representatives (as the case may be) a certificate of location which shall be transmitted to the Commissioner of the General Land Office." and if it appears to the Commissioner that the certificate has been fairly obtained, patent is to issue for the land so located.

A person who in good faith locates land under this statute prior to January 1, 1898, is entitled to the benefits of the Act of July 1, 1898, *although the location is not approved by the issue of a patent until after January* 1, 1898. If he settled upon the land under such location prior to January 1, 1898, in good faith, believing his location gave him a right to the settlement, he would, by such settlement, be within the specific terms of the Act in respect to settlers upon the land. His location constitutes his color of title or claim of right.

By the second Act referred to above (10 U. S. Stat., p. 304,) scrip is issued which entitles the holder to locate land.

While the statute does not prescribe the manner of the location as in the case of the former statute, the practice of the Land Department is the same in respect to location by means of such scrip, and the locator settling upon the land in good faith at the date of his location, prior to January 1. 1898, would be entitled to the benefits of said Act of July 1, 1898. His settlement under a location so made would be under color of title or claim of right under a law of the United States.

9th. The entries of the lands in question under which the defendants claim the lands.

First. The bill of complaint states (paragraph XI and XII, pp. 9, 10, 11 and 12,) that long after the definite location and construction of the railroad, "and at divers times *subsequently to August* 1, 1893. all of the lands described in said Exhibit A hereto annexed were wrongfully and unlawfully permitted *by the proper officers of the Land Department of the United States* to be entered under various land laws of the United States, and final certificates of such entries were issued to the several persons entering the same. That the dates and character of said several entries are as specified in said Exhibit A. * * * That the words *cash entry* are used to describe a private entry and cash purchase of lands such as is authorized by law with reference to lands which have been offered at public sale, and not subsequently reserved or withdrawn; the word *homestead* is used to designate an entry of lands made under Section 2289 of the Revised Statutes of the United States. The lands referred to in said Exhibit A as having been located with Scrip 779B, issued by the Surveyor General of New Orleans, or by Scrip 183, State of Louisiana, were entered by scrip issued under the Act of Congress entitled, 'An Act to provide for the location of certain confirmed private land claims in the State of Missouri. and for other purposes,' approved June 2, 1858. That the lands referred to in said Exhibit A as entered with Sioux Half Breed Scrip, were entered or located with scrip issued under the provisions of the Act of Congress, entitled, 'An Act to authorize the President of the United States to cause to be surveyed the tract of land in the Territory of Minnesota belonging to the Half Breeds or mixed blood of Dacotah or Sioux Nation of Indians, and for other purposes,' approved July 17, 1854. That the several persons named in the said Exhibit A as grantees are persons to whom the lands, of which they are described as the grantees, have been conveyed by deed in due form, from the entryman of said lands. * * * That as to any descriptions of land mentioned in said Exhibit A with respect to which the date (of) the character of the entry is not specified, the date and character of such entry or entries is to your orators unknown. That the only lands with respect to which, so far as your orators are advised, patents have been issued, upon the pretended entries referred to in Exhibit A, are those with respect to which the date of the patent is specified in the fourth or last column of said Exhibit. * * * That but for the vested rights of the said Northern Pacific Railroad Company and its grantees in the several tracts of land described in Exhibit A, the said lands would, at the several dates of the respective alleged entries thereof described in said Exhibit A, have been unappropriated public lands of the United States open to the several kinds of entries or location, made, or pretended to be made, with respect to them severally, as shown in Exhibit A, and that the several applications and proceeding with respect to the said several entries were in due form, and regularly conducted as required by law, and in the absence of the vested rights of the said Northern Pacific Railroad Company and its grantees in the said premises, would have been operative and effectual to invest the several entryman of said lands with complete equitable title thereto, each of such entries and locations *having been finally receipted for, allowed and approved by the proper land officers of the United States."*

By these statements the bill shows *that all the lands were entered under a law of the United States.*

Said Exhibit A shows that there are cash entries, homestead entries, and scrip entries, which were made prior to January 1, 1898, in cases where no patents have been issued. As to all such entries the bill shows that they are clearly within the provisions of the Act of July 1, 1898, and subject to the administration of the Act by the Secretary of the Interior. The bill states in reference to that Act as follows (paragraph IX, p. 8): "That down to the time of the execution and delivery of the said deed from the Northern Pacific Railway Company to your orators, the Honorable Secretary of the Interior of the United States had not, nor has he at any time heretofore, caused to be prepared or delivered to either of the said railroad companies, or to anyone, a list or lists of any of the tracts which had been purchased or settled upon, or occupied, opposite to or along any portion of the line of road of said Northern Pacific Railroad Company east of Thompson Junction aforesaid, as provided by the Act of Congress, entitled, 'An Act making appropriations for sundry civil expenses of the government, for the fiscal year ending June 30th, 1899, and for other purposes,' approved July 1st, 1898."

In this manner the bill of complaint brings into the case the Act of July 1, 1898, and gives as the reason why it does not apply to all these entries, which it avers were all made after August 1, 1893, *that the Secretary of the Interior had not, before the conveyance by the railway company to the complain-*

ants, caused to be prepared or delivered a list of the lands covered by said Act.

There is no claim or statement in the bill of complaint that any portion of the lands were purchased, entered or settled upon subsequent to January 1, 1898, or that there is any portion of the lands which do not come within the provisions of said Act of July 1, 1898.

Second. Said Exhibit A of the bill states that a portion of the lands were patented, giving the dates of the patents, some of which dates are prior to January 1, 1898, and some are subsequent.

In respect to all the patented lands, whether the patents are dated prior or subsequent to January 1, 1898, Exhibit A shows that the patents were *upon cash entries made before January* 1, 1898, except in six instances. In respect to those six instances complainants' Exhibit 26 (R. pp. 418 to 429) shows that the *date of sale in each case upon which the patent issued was prior to January* 1, 1898.

It thus distinctly appears by the bill and the complainants' evidence that all the lands for which patents have issued were lands "purchased directly from the United States" by "cash entries," or by "sales" *prior to January* 1, 1898, and come within the provisions of the Act of July 1, 1898.

Third. The lands for which patents have not issued.

The only evidence in the case in respect to the date or character of the entries of the lands which have not been patented is the complainants' said Exhibit 26 (R. pp. 418 to 429) offered at pages 180, 181. The exhibit is a transcript of tract books of the local land office at Duluth.

The exhibit does not show the character of the original entry of the land in any case. While the bill and Exhibit A state that some of the entries were made under the homestead law, some of them were made under scrip issued under 11 U. S. Stat., p. 294, and 10 U. S. Stat., p 304. and some were *cash entry,* that is, "private entry and cash purchase lands such as is authorized by law with reference to lands which have been offered at public sale, and not subsequently reserved or withdrawn," said Exhibit 26 does not show any such entries. In a column headed "Date of Sale," it simply gives certain dates, and in another column headed "Number of Receipt and Certificate of Purchases" gives other dates. *Whether these sales referred to in said Exhibit were under the Timber and Stone Act, or were under the homestead law and made after a settlement residence and improvement for fourteen months, or were under said statutes allowing the acquiring of lands upon scrip, is not shown by the exhibit.*

Fourth. The bill states that all the entries were made "*subsequently to August first,* 1893." and that "cash entry," described in Exhibit A, (which exhibit describes all the entries as cash entries, except fifteen entries,) is a "purchase of lands such as is authorized by law with reference to lands which have been offered at public sale and not subsequently reserved or withdrawn."

The law which authorized *such purchases* was Section 2357 of the Revised Statutes. This law was repealed by Act of March 2, 1889, Chap. 381, 25 U. S. Stat., 854.

2 Comp. Laws 1891, p. 1445.

No such purchases as are specified in the bill as "cash entry" could have been made.

The entries under which the defendants claim the lands were either under the homestead law or the Timber and Stone Act, instead of under the law referred to by the bill. If entered under the homestead law, or the Timber and Stone Act, the date of the original entry is not stated in the bill of complaint nor is shown by the evidence.

Fifth. The statement of the certificate of the Circuit Court of Appeals, in paragraphs IV and V (R. p. 864), of the quantity of lands "entered" prior to January 1, 1898, and the quantity of lands "entered" since January 1, 1898, is based upon the said Exhibit 26; since that exhibit is the only evidence in the case upon the subject.

The statement of the certificate does not take into account that it is not the formal entry of the land denominated by the term *sale,* as described in said Exhibit 26, which entitles a party to the benefit of the Act. It is purchase, or settlement, or claim made in good faith under color of title or claim of right, prior to January 1, 1898, which gives the right to such benefit. The formal entry may be made after that date and not affect the right to the benefit which had been before acquired.

Sixth. The defendants' answer, by paragraph VI (page 50), denies that the lands were wrongfully and unlawfully permitted by the officers of the Land Department to be entered, and avers that at the date of the several entries the lands were vacant public lands subject to entry; that the said alleged selections of the lands by the railroad company had never been approved by the Secretary of the Interior, and had been cancelled, and the lands made subject to entry and settlement.

Paragraph VIII (pp. 51, 52,) sets up the ruling of the Secretary of the Interior by which the lands were opened to entry and settlement, and states that "after the restoration of these lands to the public domain, the lands in which these defendants are interested were under the land laws of the United States duly and legally entered, and *each and every location was previous to January* 1, 1898, and after such location such proceedings were taken by said locator that a certificate was issued in the usual form to said locator, and in some cases patents were issued thereon for said lands. * * * That said locators *were each actual and bona fide settlers* over the age of twenty-one years and citizens of the United States."

Paragraph IX (p. 53) of the answer avers the acceptance and adoption of the Act of July 1, 1898, by the Northern Pacific Railway Company and states the proceeding taken by the Secretary of the Interior to administer the act, and avers (p. 57), "that all the land claimed by the defendants in this controversy come within the provisions of the Act of Congress of July 1, 1898, and the rules and regulations of the Land Department governing the same."

Seventh. The evidence shows these facts, viz.: That the selections of the lands by the railroad company were never approved by the Secretary of the Interior, but were cancelled by him, and the lands were opened to entry and settlement. (Exhibit 30, R. pp. 429. 430. 431); that the defendants claim to have entered the lands under this ruling of the Secretary of the Interior; that the Secretary of the Interior has restored the lands to the records of the Land Department to be considered by the department and adjustment be made between the railway company and the claimants of the lands under the land grant to the railroad company *and the Act of July* 1, 1898.

Exhibits 31 and 32, Rec. pp. 431, 432, 433.

The questions of the rights of the parties under both laws are now pending before the Secretary, and he is engaged in administering the laws.

Exhibit K, Rec. p. 737.
Exhibit H, Rec. pp. 665, 666, 667.
Northern Pac. Railway Co., 29, L. D., 316, 317, 318.

The jurisdiction to determine the facts which determine the rights of the parties under the Act of July 1, 1898, in respect to the dates and character of their claims, as well as the rights of the railway company to the selections of the lands under the land grant, is vested in the Secretary of the Interior.

The Act provides "that the Secretary of the Interior shall, from time to time, ascertain. and as soon as conveniently may be done, cause to be prepared and delivered to the said railroad grantee. or its successors in interest, a list or lists of the several tracts which have been purchased or settled upon, or occupied as aforesaid and are now claimed by said purchasers or occupants, their heirs or assigns, according to the smallest government subdivision."

It further provides, "that the railroad, grantee, or its successors in interest shall accept the said list or lists so made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it."

The jurisdiction to determine what tracts come within the provisions of the Act, by purchase, settlement or occupation, and which shall be relinquished by the railroad company is exclusively vested in the Secretary of the Interior.

The Circuit Court in which this suit is brought can not take that jurisdiction from the Secretary.

The question of the jurisdiction of the Court in this case is discussed and authorities are cited, under Point XI, page 131 of this brief, to which attention upon the subject is invited.

10th. It is respectfully submitted that the adjustment of the rights of the parties should be remitted to the Secretary of the Interior under the construction which shall be given by this Court to the Act of July 1. 1898, in respect to the questions raised upon the effect of the acceptance of the Act by the Northern Pacific Railway Company, the conveyance of the lands by the company to the complainants, the purchase, settlement and claims made to the lands prior to January 1, 1898, which give to the defendants the right to protection under said Act. and the existence of such rights in cases where patents have been issued.

Germania Iron Co. v United States, 165 U.S., 379 at 382

VI.

The railroad company acquired no title to the lands by filing the selection lists.

Title to lands within either the first or second indemnity limits of the grant is not acquired by the railroad company unless and until the selections made by the railroad company are approved by the Secretary of the Interior

The question is not whether, as stated by the complainants, the selections were "defeated by the subsequent entrymen by failure of the Secretary of the Interior to approve them.",

The question is as to the title of the railroad company before the selections are approved.

Section 3 of the Act of July 2nd, 1864, granting lands to the Northern Pacific Railroad Company (13 U. S. Stat.. p. 367) provides: "That there be, and hereby is, granted to the \ Northern Pacific Railroad Company, its successors and assigns * * * * * *every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile, on each side of said railroad, whenever it passes through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption, or other claims or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections, or parts of sections, shall have been granted, sold, reserved, occupied by homestead settlers or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, *under the direction of the Secretary of the Interior,* in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections."

The fact that directions have been given by the Secretary of the Interior for making and presenting lists of selections, and that those directions have been followed, does not dispense with the approval of the selections by the Secretary in order that the railroad company may have either an equitable or legal title to the lands. There is no distinction in respect to the requirement that the selections shall be approved by the Secretary of the Interior, arising from the fact that in some of the land grants made to aid in the construction of railroads, the provision for selection is that the selection is to be made *subject to the approval of the Secretary of the Interior,* while in other grants the provision is that *the Secretary of the Interior is to cause the indemnity lands to be selected,* and in still other grants, as in the case of the grant to the Northern Pacific Railroad Company, the provision is that the lands are to be selected *under the direction of the Secretary of the Interior.*

Whether the provision of the grant is in the one or the other of these forms of expression, the purpose of the grant in each case is that the selection must receive the approval of the Secretary of the Interior as a condition of acquiring title under the selections, and that no title passed to the railroad company in either case until the approval is made. *Until* approval is made, the title remains complete in the United States.

Ryan vs. Railroad Co., 99 U. S., 382, 386.

Kansas Pacific R. Co. vs. Atchison R. Co., 112 U. S., 414, 419.

Sioux City R. Co. vs. Chicago Railway, 117 U. S., 406, 407.

Wisconsin Cen. R. Co. vs. Price Co., 133 U. S., 496, 512.

United States vs. Missouri, &c., Ry., 141 U. S., 358, 367, 374, 375. 376.

Southern Pac. R. Co. vs. Bell, 183 U. S., 675.

Groeck vs. Southern Pac. R. Co., 183 U. S., 690.

Oregon & Cal. R. R. Co. vs. United States, 189 U. S., 103.

Clark vs. Herington, 186 U. S., 206, at 209.

Northern Pacific R. Co., 2 L. D., 820.

Northern Pacific R. Co. vs. Miller, 7 L. D., 100, 123, 124.

Northern Pacific Rd. vs. Walters, 13 L. D., 230 at 235, 236.

Northern Pacific R. R. Co. vs. Blain, 27 L. D., 361, 363.

Meister vs. St. Paul, Minneapolis & Manitoba R. Co., 14 L. D., 624, 626.

Walker vs. Southern Pacific R. R. Co., 24 L. D., 172, 173.

Oregon & California R. R. Co., 28 L. D., 363.

Southern Pacific R. Co., 28 L. D., 281.

Oregon & California R. Co. vs. Bales, 28 L. D., 231, 232, 233.

Grandin vs. La Bar, 57 N. W., 241 at 244, 247 (N. D.)

Southern Pacific R. Co. vs Wood, 57 Pac., 388, (Cal.)

Resser vs. Carney, 54 N. W., 89, (Minn.)

Northern Pac. R. Co. vs. Fly, 27 L. D., 464 at 466.

Dunnigan vs. Northern Pac. R. Co., 27 L. D., 467 at 468.

Musser vs. McRae, 38 Minn., 408.
38 N. W., 103.

Musser vs. McRae, 44 Minn., 343.
46 N. W., 673.

Elling vs. Thexton, 16 Pac., 931 at 936 (Mont.)

Jackson vs. La Moure County, 46 N. W., ~~499~~ 449 (N. D.)

A. The decisions of the Supreme Court.

In Ryan vs. Railroad Company, 99 U. S., 382, 386, the language of the grant is that the lands "shall be selected by said companies in lieu thereof, under the direction of the Secretary of the Interior." The decision in that case was with respect to the lieu lands; that the right to them "attached to no specific tracts until the selection was actually made *in the manner prescribed.*"

In the case of Kansas Pacific R. R. Co. vs. Atchison R. R. Co., 112 U. S., 414, 419, the language of the grant is: "It shall be the duty of the Secretary of the Interior to select," the Court held in this case that no title could be acquired in specific indemnity lands "*until actual selection.*"

In Sioux City R. R. Co. vs. Chicago Railway, 117 U. S., 406, 407, the language of the grant is that the lands "should, by the Secretary of the Interior, be caused to be selected." In this case, after stating "that in respect to the lands within the primary limits, the location of the road fixed the right of the company to such sections," the Court say (p. 408): "But no title to indemnity lands was vested until a selection was made by which they were pointed out and ascertained, *and the selection made approved by the Secretary of the Interior.*"

In Wisconsin Central R. R. Co. vs. Price County, 133 U. S., 496, 512, the language of the grant is that the lands shall be selected "subject to the approval of the Secretary of the Interior."

In this case the lands within the indemnity limits of the railroad company had been selected in the place of lands which had been disposed of by the United States prior to the date of the grant made to aid in the construction of the road. The Secretary of the Interior refused to approve of the selections on the ground that under the decision of the Court in the case of Leavenworth, etc., R. R. vs. United States, 92 U. S., 733, the railroad company was not entitled to select indemnity lands in the place of such lands as had been disposed of by the United States prior to the grant. It was on this ground alone that the Secretary of the Interior refused to approve the selections. No patent had been issued for the lands, and while they stood in this condition they were assessed for taxes. The suit was brought to set aside the tax assessment. The taxes were for the year 1883. Afterwards, and in 1884, a patent was issued for the lands to the railroad company by the State of Wisconsin, to whom the land grant ran; after the issuing of such patent the suit was brought. The question in the case was whether the railroad company had such title to the lands that they might be taxed under the laws of Wisconsin.

In deciding the case, Justice Field says, on page 505: "That where Congress has prescribed the conditions upon which portions of that domain (public domain) may be alienated, and provided that upon the performance of the conditions a patent of the United States shall issue to the donee or purchaser, and all such conditions are complied with, the land alienated being distinctly defined, it only remaining for the government to issue its patent, and until such issue holding the legal title in trust for him, who in the meantime is not excluded from the use of the property—in other words, when the government has ceased to hold any such right or interest in the property as to justify it in withholding a patent from the donee or purchaser, and it does not exclude him from the use of the property—then the donee or purchaser will be treated as the beneficial owner of the land, and the same be held subject to taxation as his property."

It thus appears distinctly that land may be subject to taxation, where, as between the government of the United States and the individual or corporation, the individual or corporation is the equitable owner of the land.

The Court held that the decision of the Secretary of the Interior, that indemnity selections could not be made on account of the lands disposed of by the government prior to the grant, was error, *but the Court held that until selection of indemnity lands was made and that selection was approved by the Secretary of the Interior, there was no selection; the approval of the Secretary of the Interior was necessary to constitute any selection at all.*

Upon this subject the Court say (pp. 511, 512):

"For such lands no title could pass to the company, not only until the selections were made by the agents of the State appointed by the Governor, but until such selections were approved by the Secretary of the Interior. The agent of the State made the selections, and they had been properly authenticated and forwarded to the Secretary of the Interior. But that officer never approved of them. *Nor can such approval be inferred from his not formally rejecting them.* He refused, as already stated, to issue to the company any patents for any more lands, insisting that it had already received over 40,000 acres too much, and he directed the Commissioner of the General Land Office to require the company to restore this excess to the government. *The approval of the Secretary was essential to the efficacy of the selections, and to give to the company any title to the lands selected. His action in that matter was not ministerial, but judicial. He* *was required to determine, in the first place, whether there were any deficiencies in the land granted to the company which were to be supplied from indemnity lands; and in the second place, whether the particular indemnity lands selected could be properly taken for those deficiencies. In order to reach a proper conclusion on these two questions, he had also to inquire and determine whether any lands in the place limits had been previously disposed of by the government, or whether any pre-emption or homestead rights had attached before the line of the road was definitely fixed.* There could be no indemnity unless a loss was established. And in determining whether a particular selection could be taken as indemnity for the losses sustained, he was obliged to inquire into the condition of those indemnity lands, and determine whether or not any portion of them had been appropriated for any other purpose, and if so, what portion had been thus appropriated, and what portion still remained. *This action of the Secretary was required. not merely as supervisory of the action of the agent of the State, but for the protection of the United States against an improper appropriation of their lands. Until the selections were approved there were no selections in fact, only preliminary proceedings taken for that purpose; and the indemnity lands remained unaffected in their title.* Until then. the lands which might be taken as indemnity were incapable of identification; the proposed selections remained the property of the United States. The government was, indeed, under a promise to give the company indemnity lands in lieu of what might be lost by the causes mentioned. *But such promise passed no title, and until it was executed, created no legal interest which could be enforced in the Courts.* The doctrine, that until selection is made no title vests in any indemnity lands, has been recognized in several decisions of this Court. Thus in *Ryan* vs. *Railroad Co.*, 99 U. S., 382, 386, in considering a grant of land by Congress, in aid of the construction of a railroad, similar in its general features to the one in this case, the Court said: 'Under this statute, when the road was located and the maps were made, the right of the company to the odd sections first named became *ipso facto* fixed and absolute. With respect to the lieu lands, as they are called, the right was only a float, and attached to no specific tracts until the selection was actually made in the manner prescribed.' And again, speaking of a deficiency in the land granted, it said. 'It was within the secondary or indemnity territory where that deficiency was to be supplied. The railroad company had not and could not have any claim to it until specially selected, as it was, for that purpose.' The selection had not been approved by the Secretary."

It will be observed that in deciding this case where the holding is so distinct that in order to be of any effect to pass title, the selections must have the approval of the Secretary of the Interior, reference is made to the decision in the case of *Ryan* vs. *Railroad Co.*, 99 U. S., 382, 386, where, as pointed out, the language of the statute is different, and that no distinction is made by the Supreme Court between the two cases.

In the case of United States vs. Missouri, Kansas, &c., Railway Co., 141 U. S., 358, at 367, 374, 375, 376, the question in the case was whether the United States had the title to the lands or whether the railroad company had acquired the title. The language of the grant is that, "It shall be the duty of the Secretary of the Interior to cause to be selected."

In deciding this case no distinction is made between the language of the grant in this case and the language of the grant which was involved in the case of Wisconsin Central Railroad Co. vs. Price County.

In the opinion of the Court (pp. 374, 375, 376.) after stating in reference to the indemnity lands that no rights had attached to them before their selection, with the approval of the Secretary of the Interior, the Court proceeds as follows: "We say, prior to such selection and approval, because as to lands which may legally be taken for purposes of indemnity, the principle is firmly established that title to them does not vest in the railroad company, for the benefit of which they are contingently granted, but, *in the fullest legal sense, remains in the United States, until they are actually selected and set apart, under the direction of the Secretary of the Interior, specifically for indemnity purposes.* It was so held in *Kansas Pacific Railroad Co.* vs. *Atchison Railroad*, 112 U. S., 414, 421, in which the Court, referring to the above Act of 1863, said in reference to the lands in the indemnity limits: 'Until selection was made the title remanied in the government, subject to its disposal at its pleasure. * * * The grant to Kansas, as stated, conferred only a right to select lands beyond ten miles from the defendant's road, upon certain contingencies. It gave no title to indemnity lands in advance of their selection.' The same principle was announced in *Barney* vs. *Winona & St. Peter R. R.*, 117 U. S., 228, 232, where the Court said: 'In the construction of land grant Acts in aid of railroads, there is a well established ditinction observed between 'granted lands' and 'indemnity lands.' The former are those falling within the limits specially designated and the title to which attaches when the lands are located by an approved and accepted survey of the line of the road filed in the land department, as of the date of the Act of Congress. The latter are those lands selected in lieu of parcels by previous disposition or reservation for other purposes, and the title to which accrues only from the time of their selection.' So in *Sioux City &c., Railroad* vs. *Chicago, Milwaukee, &c., Railway*, 117 U. S., 406, 408: 'No title to indemnity lands was vested until a selection was made by which they were pointed out and ascertained, and the selection made approved by the

Secretary of the Interior.' But the fullest and most recent expression of opinion upon this question by this Court is in *Wisconsin Cent. Railroad* vs. *Price County,* 133 U. S., 496, 511, where it was said: 'He (the Secretary) was required to determine, in the first place, whether there were any deficiencies in the land granted to the company which were to be supplied from indemnity lands; and, in the second place, whether the particular indemnity lands selected could be properly taken for those deficiencies. In order to reach a proper conclusion on these two questions, he had also to inquire and determine whether any lands in the place limits had been previously disposed of by the government, or whether any pre-emption or homestead rights had attached before the line of the road was definitely fixed. There could be no indemnity unless a loss was established. * * * * *Until the selections were approved there were no selections in fact, only preliminary proceedings taken for that purpose; and the indemnity lands remained unaffected in their title.* Until then the lands which might be taken as indemnity were incapable of identification; the proposed selections remained the property of the United States. The government was, indeed, under a promise to give the company indemnity lands in lieu of what might be lost by the causes mentioned. But such promise passed no title, and, until it was executed, *created no legal interest which could be enforced in the Courts."*

It will be observed that in this last case, making no distinction between the terms of the different grants, reference is made to the cases of *Kansas Pacific Railroad* vs. *Atchison Railroad,* 112 U. S., 414, and *Sioux City, &c., R. R.* vs. *Chicago. &c., Railway,* 117 U. S., 406, 408, and that extensive quotations are made from the Price County case, in which the language is distinct that "until the selections were approved there were no selections in fact, only preliminary proceedings taken for that purpose; and the indemnity lands remained unaffected in their title."

There is also quoted from the Price County case a statement of the Secretary of the Interior, showing the acts required to be done for the proper disposition of the lands which constitute judicial action by the Secretary of the Interior.

In Southern Pacific R. R. Co. vs. Bell, 183 U. S., 675, the railroad company sought to establish title under its grant of lands within the indemnity limits which had been patented to Bell.

The grant to the Southern Pacific Railroad is in the same terms as the grant to the Northern Pacific Railroad. An order was made by the Land Department withdrawing the lands within the indemnity limits from sale or location, pre-emption or homestead entry, on filing the plat of definite location of the road, in 1867.

The land in question was patented to Bell September 15th, 1892. The railroad company selected the land July 26th, 1893.

In deciding the case against the railroad company, the Court, Mr. Justice Brown delivering the unanimous opinion, after holding that the lands within the indemnity limits did not come within the designation in the statute of "land hereby granted;" that "to lands within the indemnity limits the company takes no title until a deficiency in the place limits has been ascertained, and the company has exercised its right of selection;" that there was no power in the Land Department under the grant to withdraw the lands within the indemnity limits from sale, pre-emption or homestead entry, concludes in the following language (p. 238): "We are therefore of opinion that the Act of July 27, 1866, did not authorize the withdrawal by the Secretary of the Interior of the Indemnity lands, that such lands remained open to homestead and preemption entry, and that patents issued to settlers within such indemnity limits, based upon the entries made prior to the selection by the railroad company, *approved by the Interior Department,* were valid as conveyances of the land as against the selection by the railroad company."

In Clark vs. Herington, 186 U. S., 206, the court had under consideration the grant to the Union Pacific Railroad Company (14 U. S. Stat., 289) in which it was provided that the Secretary of the Interior "cause to be selected" the indemnity lands. The Court, by Mr. Justice Brewer, say (p. 209): "It is familiar law that no title to indemnity lands is vested until an approved selection has been made, and that up to such time Congress has full power to deal with lands in the indemnity limits as it sees fit."

In Oregon & Cal. R. Co. vs. United States, 189 U. S., 103, the Court passed upon the right of the railroad company to indemnity lands under the grant made under 14 U. S. Statutes, 239. which grant as in the grant to the Northern Pacific Railroad Company, provided for the selection of indemnity lands "under the direction of the Secretary of the Interior." Mr. Justice Harlan delivering the unanimous opinion of the Court says: "Now it has long been settled that while a railroad company, after its definite location, acquires an interest in the odd numbered sections within its place or granted limits—which interest relates back to the date of the granting act, the rule is otherwise as to lands within indemnity limits. As to lands of the latter class, the company acquires no interest in any specific sections until a selection is made with the approval of the Land Department; and then it relates to the date of the grant." After citing cases among which is Wisconsin Cent. R. Co. vs Price County, 133 U. S., 496, at 508, 513,

Justice Harlan says: "It-is to be taken as established that, unless otherwise expressly declared by Congress, no right of the railroad company attaches, or can attach to specific lands within indemnity limits until there is a selection under the direction or with the approval of the Secretary."

B. The decisions of the Secretaries of the Interior.

In Northern Pacific Railroad Company, 2 L. D., 820, the decision was upon the grant to the Northern Pacific Railroad Company. It is addressed to the Special Timber Agent, by Acting Commissioner Harrison, of date May 26th, 1883, and says: "Referring to your communication of the 8th instant, in relation to the taking of timber from indemnity limits by the Northern Pacific Railroad Company, you are advised that until lands within such limits have been selected by the company, *and the selection so made has received the approval of this office*, said company have no right to enter thereon and take timber, further than so much as they may require for construction purposes. The taking, therefore, of timber to be applied to other uses, prior to the time indicated, would constitute a trespass upon the part of the company."

In Northern Pacific Railroad Company vs. Miller, 7 L. D., 100, the decision was upon the same ground and was made in a very carefully expressed opinion, by Secretary Vilas, and is of date August 2nd, 1888, in which the Secretary held that a selection of land made by the railroad company from the indemnity limits was not valid until approved by the Secretary of the Interior. He uses the following language (pp. 123, 124): "The selection must be one which is both well founded in the necessity for it and the manner of making it, and, therefore, one within the direction and approval of the Secretary of the Interior. In this case the original selection list gave no indication of the basis upon which a right of selection of this tract could be claimed. It proceeded upon the assumption that the company might 'select' as many lands as it saw fit, and make proof of its losses afterwards. This practice was, indeed, permitted for some time in the General Land Office, and thus it has happened that some railroad companies have selected, in lieu of lost lands, and procured certification of lands much in excess in acreage of their losses for which the selections were admissible. It was also specially allowed in the case of this company. But it was so allowed only upon condition that the basis was subsequently to be supplied, and no selection was valid ***until approved after such basis should be determined.*** It was thus only a question of the order of procedure."

"This practice was of doubtful validity, at least to give a right from date of first selection, and was changed some time since, by departmental regulation. The Act is explicit that, whenever, prior to the definite location of the line, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers or pre-empted, or otherwise disposed of, other lands shall be selected by said company ***in lieu thereof,*** under the direction of the Secretary of the Interior, etc., etc."

"Manifestly, it was necessary to point out the section, or the part of a section which had thus been lost to the grant, and the manner of its loss, in order to authorize the taking of another tract of land in place of it. The department ought, before approval of a selection, first to determine whether the land lost to the grant was so previously appropriated as to furnish the basis of a selection, and it ought to be particularly shown for what specific lands lost, specific selections were made. Until these facts appear, the company has not established the right to appropriate from the body of lands open to its choice but is confined to those specifically granted."

"In accordance with this rule, my predecessor (Mr. Lamar), on the 4th of August, 1885, approved a circular from your office to the local officers, in which they were directed as follows:"

Before admitting railroad indemnity selections in any case, you will require preliminary lists to be filed, specifying the particular deficiencies for which indemnity is claimed. * * * Where indemnity selections have heretofore been made without specification of losses, you will require the companies to designate the deficiencies for which such indemnity it to be applied, before further selections are allowed.

"It was in obedience to the last clause that this company filed, on the 25th of October, 1887, the list of particular deficiencies upon which the claim of selections in list number two before mentioned was based. That list excellently illustrates the necessity for the rule mentioned. Since 1883 the claim of this company to take the 58,000 acres in list number two has remained a cloud upon all the lands embraced within it. Yet, when called upon to specify particular lands lost from the granted limits, for which such a right of selection can exist, only 4,011 acres are shown, except by claiming indemnity for about 55,000 acres of lands, for the most part not particularly defined, lying within the Yakima Indian Reservation."

In Northern Pacific Railroad Company vs. Walters, 13 L. D., 230 at 235, 236, Secretary Noble, in holding the approval of the Secretary necessary to the selections under the same grant, quotes from the case of Wisconsin Central Railroad Co. vs. Price County, 133 U. S., 496, that *"until the selections were approved there were no selections in fact, only preliminary proceedings taken for that purpose; and the in-*

demnity lands remained unaffected in their title."

In Northern Pacific Railroad Company vs. Blain, 27 L. D., 361, 363, the decision is upon the grant to the Northern Pacific Railroad Co., and is distinct that the company obtains no right to lands within the indemnity limits until the selection has been made and the same has been approved.

In Meister vs. St. Paul, Minneapolis & Manitoba R. R. Co., 14 L. D., 624, 626, claim was made to the lands in question by the Northern Pacific Railroad Co. under its grant. The decision involved the construction of that grant. The decision is by Secretary Noble, and holds that the approval of the selection by the railroad company is necessary, and refers to the case of Wisconsin Central Railroad Co. vs. Price County, 133 U. S., 496, and of United States vs. Missouri, &c., Railway Co., 141 U. S., 358, 376, and quotes from the Price County case that, *"The approval of the Secretary was essential to the efficacy of the selections, and to give to the company any title to the lands selected."*

In Walker vs. Southern Pacific Railroad Co., 24 L. D., 172, 173, the decision was under the grant to the Southern Pacific Railroad Co., the terms of which are the same as in the grant to the Northern Pacific Railroad Co., providing that the selection of the indemnity lands is to be made by the company, "under the direction of the Secretary of the Interior." (14 U. S. Statutes, 294.)

The decision is by Secretary Francis, and after quoting from the case of Wisconsin Central Railroad Co. vs. Price County, which quotation has been made above, the Secretary adds (p. 174): *"The doctrine thus authoritatively declared has been* *recognized in other decisions of the same Court and stands today as law upon the point under discussion.* In this case no approval of the Secretary has been given to the company's selection."

In Oregon & California Railroad Co., 28 L. D., 363, the decision is by Secretary Hitchcock, under a grant to aid in the construction of a railroad and telegraph line of the Central Pacific Railroad in California, to Portland, Oregon. The provision in regard to the selection within indemnity limits is the same as in the grant to the Northern Pacific Railroad Co., viz.: The selection is to be made by the company "under the direction of the Secretary of the Interior." (14 U. S. Statutes, 239, 240.)

The Secretary says (p. 365): "The right to indemnity conferred by the grant is merely a right to select public lands within designated limits, under certain contingencies, but no title to any particular land vested in the company *until after a selection had been made and approved.*"

The Secretary cites as authority for this position the case of Wisconsin Central Railroad Co. vs. Price County, 133 U. S., 496, and United States vs. Railroad Co., 141 U. S., 358.

In Southern Pacific Railroad Co., 28 L. D., 281, the decision is upon the selection of indemnity lands claimed under the grant to the Southern Pacific Railroad, which, as we have seen, is like the grant to the Northern Pacific Railroad Company on the subject of selection of lands.

The decision is upon the selection which had been made, but had not been approved. Referring to the proceedings under which the selection had been made, the Secretary says (p. 283): *"All that could have been acquired by such proceedings was merely the inchoate right to have its selection approved,"* then quotes a statement from Wisconsin Central

R. R. Co. vs. Price County, that "until the selections were approved there were no selections in fact, only preliminary proceedings taken for that purpose." * * * "There are no selections in fact until after approval, and until a selection is made the title remains in the government, 'subject to its disposal at its pleasure.'"

In Oregon & California R. R. Co. vs. Bales, 28 L. D., 231, the decision is under the grant of lands to aid in the construction of a railroad and telegraph line from Portland to Astoria, in the State of Oregon, (16 U. S. Statutes, 94,) under which provision for the selection of indemnity lands was that the lands "shall be selected under the direction of the Secretary of the Interior."

In deciding the case, the Secretary says (p. 233): "Under repeated adjudications by the Courts and this department, no title passes to lands within the indemnity limits until they have been selected in the manner prescribed by the Act, *that is, until the company's selection has been approved by the Secretary of the Interior.*"

It will be observed from the above decisions of the several Secretaries of the Interior, from 1883 to 1897, the holding has been uniform upon the very terms of the grant of the Northern Pacific Railroad Company, that the selections of the indemnity lands conferred no title upon the railroad company until the selection was approved by the Secretary of the Interior, and by the making of the selections the railroad company gets no other right than to have the selections presented to the Secretary of the Interior for his approval.

C. The decisions made by the Secretaries of the Interior cited above, giving a construction to the Act, while they are administering the grant through a long series of years, are of

weight with the Court when called upon to decide the same question.

Knight vs. U. S. Land Association, 142 U. S., 161 at 178.

Heath vs. Wallace, 138 U. S., 573 at 582.

Hewitt vs. Schultz, 180 U. S., 139 at 156, 157.

Southern Pacific R. Co. vs. Bell, 22 Sup. Ct. Rep., 232.

In Heath vs. Wallace, 138 U. S., at 582, the Court, referring to the construction put upon a swamp land grant, says: "Those adjudications covering a consecutive period of nearly nine years, and, so far as can be gathered from the printed reports of the decisions of that department relating to public lands, being the only ones bearing upon the subject, ought to be taken as showing conclusively the meaning attached to the phrase, 'land subject to periodical overflow,' by the officers of the department whose duty it is, and has been, to administer the swamp land grant. Moreover, if the question be considered in a somewhat different light, viz.: as the contemporaneous construction of a statute by those officers of the government whose duty it is to administer it, then the case would seem to be brought within the rule announced at a very early day in this Court, and reiterated in a very large number of cases, that the construction given to a statute by those charged with the execution of it, is always entitled to the most respectful consideration, *and ought not to be overruled without cogent reasons,* for as said in United States vs. Moore, 95 U. S., 760, 763, 'the officers concerned are usually able men and masters of the subject. Not unfrequently they are the draftsmen of the laws they are afterwards called upon to interpret.' "

In Hewitt vs. Schultz 180 U. S., at pp. 156 and 157, the question was upon the construction of the Northern Pacific Railroad grant, whether, by the terms of the statute, the Secretary of the Interior had authority to withdraw the lands from public sale within the indemnity limits, the Supreme Court, following the decisions of the Secretaries upon that question, held that he had not such authority, and the Court says: "Of course, if the ruling of that office was plainly erroneous, it would be the duty of the Court to give effect to the will of Congress, for it is the settled doctrine of this Court that the practice of a department in the execution of a statute is material only when doubt exists as to its true construction. But without considering the matter as if it were for the first time presented, it is sufficient to say that the question before us cannot be said to be free from doubt. The intention of Congress has not been so clearly expressed as to exclude construction or argument in support of the view taken by Secretaries Lamar, Vilas and Smith, and upon which the land department has acted since 1888. 'It is the settled doctrine of this Court,' as was said in United States vs. Alabama Great Southern Railroad, 142 U. S., 615, 621, 'that in case of ambiguity, the judicial department will lean in favor of a construction given to a statute by the department charged with the execution of such statute, and, if such construction be acted upon for a number of years, will look with disfavor upon any sudden change, whereby parties who have contracted with the government upon the faith of such construction may be prejudiced.' These observations apply to the case now before us, and lead to the conclusion that if the practice in the land department could, with reason, be held to have been wrong, it cannot be said to have been so plainly or palpably wrong as to justify the Court, after the lapse of so many years, in adjudging that it had misconstrued the Act of July 2, 1864."

In Southern Pacific Railroad Co. vs. Bell, 183 U. S., at pages 684, 685, the Court refers to the case of Hewitt vs. Schultz, and says. "The Court rested its decision largely upon this concurrence of views and long continued practice of the Land Department, and summed up its opinion in the following words: 'If this were done' (that construction overthrown,) 'it is to be apprehended that great, if not endless, confusion would ensue in the administration of the public lands, and that the rights of a vast number of people who have acquired homes under the pre-emption and homestead laws, in reliance upon the ruling of Secretary Vilas and his successors in office, would be destroyed. If the practice in the Land Department could, with reason, be held to have been wrong, it cannot be said to have been so plainly or palpably wrong as to justify the Court, after the lapse of so many years, in adjudging that it had misconstrued the Act of July 2, 1864."

D. Decisions of the State Courts.

In Grandin vs. La Bar, 57 N. W., 241, (N. D.,) the question was distinctly presented whether one of the parties to the suit, who was a grantee of the Northern Pacific R. Co., had acquired title to the land in question, the railroad company's title depending upon a selection having been made by the Northern Pacific Railroad Company of indemnity lands, which selection had not been approved by the Secretary of the Interior. *The reasons why they had not been approved do not appear in the case.* The holding of the Court is distinct that no title passes until the Secretary approves the selection.

In Southern Pacific Railroad Co. vs. Wood, 57 Pacific, 388, decided by the Supreme Court of California in 1899, it is held that in order to acquire title to indemnity lands under the grant to the Southern Pacific Railroad Co., the selection of the lands is required to be approved by the Secretary of the Interior, and cites upon this subject the decision of the Supreme Court in the cases of Ryan vs. Railroad Co., 99 U. S., 382, and Wisconsin Central Railroad Company vs. Price County, 133 U. S., 496.

In Resser vs. Carney, 54 N. W., p. 89, (Minnesota,) a warranty deed had been made by the Northern Pacific Railroad Company to one Paine; in 1879 Paine conveyed to Kindred, Kindred to Carney and Carney to plaintiff by warranty deed, in 1882. In 1887 the plaintiff brought an action against Carney upon a breach of the warranty of the deed by which the land was conveyed to him by Carney, the cause of action urged being that Carney, at the time of such conveyance, had no title to the land. In April, 1891, the United States executed a patent for the land to the Northern Pacific Railroad Company.

The first question in the case was whether Carney had title to the land at the time of the conveyance to the plaintiff. In deciding that question the Court says (p. 89): "The selection of indemnity lands which was to be made under the direction of the Secretary of the Interior (13 Statutes at Large, p. 367, Sec. 3,) did not become effectual, nor did the title pass from the United States, at least until the selection was approved, or in some way sanctioned by the Secretary of the Interior, and hence so far as appears in this case, not until the issuing of the patent in April, 1891, *which evidenced such approval.*"

Here is a distinct holding that the selection itself does not, irrespective of whether it was regular and complied with all the regulations prescribed for the making of the selection, pass title, *until approval is made by the Secretary of the Interior.*

In Musser vs. McRae, 38 Minn., 408, the action was to recover for logs cut on lands in Wisconsin. The plaintiffs claim title under a conveyance from the Chicago, St. Paul & Minneapolis Railway Company of indemnity lands which were to be selected by the company, subject to the approval of the Secretary of the Interior under the Acts of Congress of June 3rd, 1856, and May 5th, 1864. (11 U. S. Stat., p. 20; 13 U. S. Stat., p. 66.)

The Court held that "as to lands in place, the title attached upon the definite location of the line of the road. As soon as that was done, the acts pointed out the lands. As to those to be taken for deficiencies, it was necessary that something more than fixing the line of the road should be done; it was necessary that there should be a selection, and an approval of such selection by the Secretary of the Interior. Until that was done, the title granted did not attach to any lands outside of the 10 section limit."

In Musser vs. McRae, 44 Minn., 343, there was a re-trial of the same case in which it was shown that a patent was issued by the United States to the railway company wherein the selection of the lands is recited.

In deciding the case the Court uses this language, (46 N. W., p. 674): "It does not appear when prior to the issuance of the patent such selection became operative or effectual by the approval of the Secretary of the Interior. Under the former decision of this court, then, it does not appear that the railway company acquired title until this patent was issued."

"The language of the opinion of this court on the former appeal is that, 'as to lands to be taken for deficiencies, it was necessary that something more than fixing the line of the road should be done. It was necessary that there should be a selection and an approval of such selection by the Secretary of the Interior.' The same rule is recognized and adopted by the Supreme Court of the United States. And, in respect to deficiency or 'lieu' lands under the same grant, that Court in Railroad Co. vs Price Co., 133 U. S., 511, 10 Sup. Ct. Rep., 347, say: 'The approval of the Secretary was essential to the efficacy of the selections, and to give to the company any title to the lands selected. His action in that matter was not ministerial but judicial. * * * Until selections were approved there were no selections in fact, only preliminary proceedings taken for that purpose, and the indemnity lands were incapable of identification, and remained the property of the United States. The government was indeed under a promise to give the company indemnity lands in lieu of what might be lost by the causes mentioned, but such promise passed no title, and, until it was executed, created no legal interest which could be enforced in the courts.' Upon such selection, however, the company became entitled thereto by virtue of the land-grant acts.' In this case there is no evidence of such approval, but the patent was evidence that the company had complied with the conditions of the grant, and was entitled to the lands selected, and obviated the necessity of any other evidence of its right to the lands. 133 U. S., 510."

The Court adopted the decision in Railroad Co. vs. Price Co., 133 U. S., 511, as conclusive that the railroad company gets no title to indemnity lands by the selection of them unless and until such selection is approved by the Secretary of the Interior.

In Elling vs. Thexton, 16, Pac., 931, an action in the nature of an action in ejectment was brought to recover land, claiming title under a warranty deed from the Northern Pacific Railroad Company. The land was indemnity land which had been selected by the railroad company, by filing a list in the

United States Land Office at Bozeman, March 20, 1885, in the same manner in which the Northern Pacific Railroad Company filed the lists in question in this case. The lists were certified in the same manner by the Register and Receiver of the Land Office, in which it was stated that the filing of such list was allowed and approved by the Register and Receiver.

The selections had not been approved by the Secretary of the Interior.

The selection was claimed by the Railroad Company to have been made under the order of Secretary Teller, of May 28, 1883, under which it is claimed in this case that the lists in question were filed by the Railroad Company.

In deciding that the plaintiff did not have title to the land, the Court say (p. 936): "Before the railroad company, or those holding under it, can come and ask possession of a tract of land, they must be able to deraign a title and it is upon it to show that the selection was made of the particular tract of land in controversy for a loss which it had sustained; that *in the adjustment of losses in the land office at Washington* this particular tract had been allowed as 'lieu' land, so as to give it a title. This they have not done. They have but shown a simple preliminary step towards a title; but for the want of the approval of the Secretary of the Interior, or of a showing by some authority that the land selected was in lieu of some particular land lost, they have not shown any title."

In Jackson vs. La Moure County, 46 N. W., 449, (N. Dakota), the suit was brought to enjoin tax proceedings against lands within the indemnity limits of the Northern Pacific Railroad Company. A selection of the lands had not been made by the company, but the Court makes a careful examination of what was necessary to be done in order to vest the title in such lands in the railroad company, citing the case of Wisconsin Central Railroad Company vs. Price County. The opinion of Justice Corliss, in which all the Court concur, uses this language (p. 449): "Even selection by the company, without the approval of the Secretary of the Interior, would not have divested the government of its title to the land. It was so held in the case cited. The company in that case had, in fact, made selection of the lands sought to be taxed, but the secretary had refused to approve the selection, insisting that the company was not entitled to such lands, claiming that it had already secured more than it could rightfully hold under the grant. The secretary was in error. The company was in fact entitled to as much indemnity lands as it had selected. But the Supreme Court held that, as the secretary had refused to approve the selection, no title whatever had passed, and the lands were not therefore taxable, nothwithstanding the fact that the secretary's refusal was unjustifiable. The soundness of this decision cannot be assailed. There is a well-defined difference between 'indemnity' lands and 'place' lands. The latter become instantly fixed by the adoption of the line of the road. * * * But the indemnity lands cannot be ascertained by the mere location of the road. They are substitutes for granted lands lost, and it is therefore important that the fact of such loss from the attaching superior preemption or other rights to any portion of the 'place' lands should be ascertained by the Interior Department before allowing the company to make selection for indemnity; and it is also necessary for that department to determine whether the lands which the company desires to select for indemnity are open to selection; whether there is not some prior claim upon them in behalf of settlers or others. It is therefore entirely proper that the Secretary of the Interior should have the right to approve or disapprove of the selection before it becomes final. This is clearly the meaning of the provision of the grant to the Northern Pacific, which declares that the indemnity lands shall be selected by the company 'under the direction of the Secretary of the Interior.' (Citations). The statute must have the same construction that would be given it if the word 'aproval' had been used in place of the word 'direction.'"

Again referring to the case of Wisconsin Central Railroad Co. vs. Price County, the opinion says (p. 450): "Under this last decision the approval of the Secretary of the Interior is essential to selection. Without it there is no selection in fact. In the language of the opinion in that case, 'until the selections were approved there were no selections in fact, only preliminary proceedings taken for that purpose, and the indemnity lands remained unaffected in the title.' "

The following cases make a distinction upon this subject between grants which provide for the selection of lands subject to the approval of the Secretary, and grants which provide for the selection to be made under the direction of the Secretary, viz.:

Southern Pacific R. Co. vs. Wiggs, 43 Fed., 333, 338.
Groeck vs. Southern Pac. R. Co., 102 Fed., 32.
Northern Pacific R. C. vs. Barnes, 51 N. W., 386 at 401, (N. D.)
McHenry vs. Nygaard, 74 N. W., 1106, 1108.
Sjoli vs. Dreschel, 95 N. W., 763.

It may be observed of these cases:

1st. They are in conflict with the whole line of authorities above cited.

2nd. *They are the authorities relied upon by the complainants to sustain their position that the railroad company becomes the owner of the lands without the approval of the selections by the Secretary.*

3rd. The case of Southern Pacific R. R. Co. vs. Wiggs, 43 Fed., 333, 338, does not refer to the case of Wisconsin Central Railroad Co. vs. Price County. It was decided June 23, 1890, while the Price County case was decided March 3, 1890, and the latter case may not have come to the attention of the Court.

The case is referred to and rejected as authority in the case of Grandin vs. La Bar, 57 N. W., 241, above cited

4th. The case of Groeck vs. Southern Pacific R. R. Co., 102 Fed., 32, is referred to and rejected as authority by the Supreme Court of California in the case of Southern Pacific Railroad Co. vs. Wood, 57 Pacific, 388 at 392, above cited.

The case was reversed in the Supreme Court of the United States on January 13th, 1902, 183 U. S., 690, the Court stating that the case resembled and was controlled by the case of Southern Pacific Railroad Co. vs. Bell, decided upon the same day, which latter case, cited above, states as the decision of the Court that said land remained open to homestead and pre-emption entry, and that patents issued to settlers within such indemnity limits, based upon entries made prior to the selection by the railroad company, *approved by the Interior Department,* were valid, as conveyances of the land against the selection by the railroad company.

Whether it was or was not necessary in the case of the Southern Pacific Railroad Co. vs. Bell to pass upon the question of the force of the selection which had not been approved by the Secretary of the Interior, the statement made by the

Court is in accord with every decision and expression, both of the Supreme Court and of the Land Department, that the selection by the railroad company of indemnity conveys no title to the company, unless it is approved by the Secretary of the Interior.

5th. The case of Northern Pacific R. R. Co. vs. Barnes, 51 N. W., 386, which was in the Supreme Court of North Dakota, is expressly overruled in the case of Grandin vs. La Bar, 57 N. W., 241, at 244, 247, by the Supreme Court of North Dakota, cited above, and the fact that it is overruled is referred to in the case of Southern Pacific Railroad Co. vs. Wood, 57 Pacific, at 392.

6th. The case of McHenry vs. Nygaard, 74 N. W., 1106, referred to by complainants, was decided upon a demurrer to the complaint, *which complaint stated that at the time of the definite location of the road, "all the lands in the indemnity limits were insufficient to satisfy the losses in the place limits arising from previous appropriations and dispositions."* (Page 1107.)

The point in the latter case is that *by the admission made by the demurrer* a case was presented like the case of St. Paul & Pacific Railroad vs. Northern Pacific R. Co., 139 U. S., 1, in which a like admission of fact was made by the parties. The admission of such fact affects no one but the parties to the suit, and makes the decision apply only to the case in which such admission of fact is made as a controlling fact in the case. Sjoli vs. Dreschel, 95 N. W., 763, follows the decision in McHenry vs. Nygaard.

Sage vs. Swenson, 67 N. W., p. 544, referred to by complainants, was a case in which the railroad company had acquired title upon a selection of indemnity lands, which selection was at first rejected because not made in compliance with the regulations of the Secretary of the Interior, which regulations required the piece of land selected to be matched against a specific piece of land lost, and the railroad company amended its selection by complying with the regulation, *and thereupon the selection was accepted* by the Department and title was conveyed to the railroad company. Pending this action the land had been entered upon as a homestead. *The question in this case was whether the entryman had a right to acquire title to the land as a homestead during pendency of the proceedings upon the selection of the land by the railroad company.*

The Court, in deciding the case, say: "While a land grant railway company has no vested right in a mere executive withdrawal of lands for its benefit, yet the decisions of both the Interior Department and of the Federal Courts are uniform to the effect that, so long as the withdrawal continues in force, the lands are not open to settlement and entry, and no lawful settlement on them can be acquired." And the Court held that the entryman acquired no right in the land.

VII.

The purpose of the requirement that the selection of the indemnity lands shall be approved by the Secretary of the Interior.

1st. It is most clearly the purpose of the requirement of each of the land grants that no title to the indemnity lands shall be acquired by the railroad company *until the Secretary of the Interior determines that the railroad company is en-*

titled to the lands, and this is the purpose, whether the provision be that the selections are to be made subject to the approval of the Secretary of the Interior, or that the Secretary of the Interior is to cause the indemnity lands to be selected, or that the lands shall be selected under the direction of the Secretary of the Interior.

These provisions, whether in the one form or the other, are designed to protect the United States against the disposal of the publis lands as indemnity lands, in any case, except upon a decision by the Secretary of the Interior that the railroad company is entitled, under the grant, to the lands.

The Secretary is made a judge between the United States and the railroad company in every case of the railroad company's right to any of the indemnity lands.

While the railroad company acquires title to the lands within the primary limits through the grant of the statute made *in presenti* of such lands, it acquires title to lands in the indemnity limits only by the determination of the Secretary of the Interior of the lands situated within the indemnity limits which the railroad company is entitled to take in the place of lands lost in the primary limits.

Catholic Bishop of Nesqually vs. Gibbon, 158 U. S., 155 at 167.

Knight vs. U. S. Land Association, 142 U. S., 161 at 181.

Barden vs. Northern Pacific R. R. Co., 154 U. S., 288 at 325, 326, 327, 329.

Wisconsin Central R. R. Co. vs. Price County, 133 U. S., 496 at 511.

In Catholic Bishop of Nesqually vs. Gibbon, 158 U. S., 155, at page 167, the Court, by Mr. Justice Brewer, says: "It may be laid down as a general rule that in the absence of some specific provision to the contrary in respect to any particular grant of public land, its administration falls wholly and absolutely within the jurisdiction of the Commissioner of the General Land Office, under the supervision of the Secretary of the Interior. It is not necessary that with each grant there shall go a direction that its administration shall be under the authority of the Land Department. It falls there, unless there is express direction to the contrary."

In Knight vs. United States Land Association, 142 U. S., 161, Mr. Justice Lamar, who had been a former Secretary of the Interior, delivering the opinion of the Court, says (p. 181):

"The Secretary is the guardian of the people of the United States over the public lands. The obligations of his oath of office oblige him to see that the law is carried out, and that none of the public domain is wasted or is disposed of to a party not entitled to it. He represents the government, which is a party in interest in every case involving the surveying and disposal of public lands."

In Barden vs. Northern Pacific Railroad Co., 154 U .S., 288, the duties of the Secretary of the Interior, as expressed in the foregoing cases in relation to the disposition of the public lands, *is applied to this very grant to the Northern Pacific Railroad Company.*

Mr. Justice Field, delivering the opinion of the Court, says (p. 325): "The grant under consideration is one of a public nature. It covers an immense domain, greater in extent than the area of some of our largest States, and it must be strictly construed. It would seem from the frequency with which we have announced this doctrine that it should be forever closed against further question, but as the most extravagant pretensions are made in the plaintiff's construction of the present grant, we will venture to refer to one or two of the important judicial declarations on that subject."

After referring to cases, the Justice says (p. 326): "The law places under the supervision of the Interior Department and its subordinate officers, acting under its direction, the control of all matters affecting the disposition of public lands of the United States, and the adjustment of private claims to them under the legislation of Congress."

Again, on page 327, he says: "It is the established doctrine, expressed in numerous decisions of this Court, that wherever Congress has provided for the disposition of any portion of the public lands, of a particular character, and authorizesthe officers of the Land Department to issue a patent for such land upon ascertainment of certain facts, that department has jurisdiction to inquire into and determine as to the existence of such facts, and in the absence of fraud, imposition or mistake, its determination is conclusive against collateral attack."

Again, on pages 328, 329, this language is used: "If the Land Department must decide what lands shall not be patented because reserved, sold, granted or otherwise appropriated, or because not free from pre-emption or other claims or rights at the time the line of the road is definitely fixed, it must also decide whether lands are excepted because they are mineral lands. It has always exercised this jurisdiction in patenting lands which were alleged to be mineral, or in refusing to patent them because the evidence was insufficient to show that they contained minerals in such quantities as to justify the issue of the patent. If, as suggested bv counsel, when the Secretary of the Interior has under consideration a list of lands to be patented to the Northern Pacific Railroad Company, it is shown that part of said lands contain minerals of gold and silver, discovered since the company's location of its road opposite thereto, he would not perform his duty, stated in *Knight* vs.*Land Association,* 142 U. S., 161, 178, as the 'supervising agent of the government to do justice to all claims and preserve the rights of the people of the United States,' by certifying the list until corrected in accordance with the discoveries made known to the department. He would not otherwise discharge the trust reposed in him in the administration of the law respecting the public domain."

Certainly, no distinction is made in the decisions of the above cases between the different grants made by Congress for the disposition of the public lands in respect to the jurisdiction of the Secretary of the Interior to supervise the administration. *Precisely the same reason exists for the action of the Secretary of the Interior under each of the grants and his administration, and the reasons given therefor,* viz.: *the protection of the United States and the prevention of the disposition of the public lands in any case where the disposition would be improper.*

2nd. The claim has been made on the part of the complainants that the provisions of the third section of the grant, that the indemnity lands "shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior," dispenses with the approval of the Secretary of the Interior.

The terms of this provision, *"under the direction of the Secretary of the Interior,"* have been passed upon and their meaning explained by the Supreme Court in the following cases:

Knight vs. U. S. Land Association, 142 U. S., 161 at 177, 178.
Orchard vs. Alexander, 157 U. S., 372 at 381, 382.

Stoneroad vs. Stoneroad, 158 U. S., 240 at 248, 249.
Warner Valley Stock Co. vs. Smith, 165 U. S., 28 at 34.

In Knight vs. United States Land Association, 142 U. S., 161, at page 177, the Court say: "Sec. 453 provides: 'The Commissioner of the General Land Office shall perform, *under the direction of the Secretary of the Interior,* all executive duties appertaining to the surveying and sale of the public lands of the United States, or in any wise respecting such public lands, and also such as relate to private claims of land, and the issuing of patents for all (*agents*) (grants) of land under the authority of the government.' Sec. 2478 provides: 'The Commissioner of the General Land Office, *under the direction of the Secretary of the Interior,* is authorized to enforce and carry into execution, by appropriate regulations, every part of the provisions of this title (The Public Lands) not otherwise specially provided for.' "

"The phrase, 'under the direction of the Secretary of the Interior,' as used in these sections of the statutes, is not meaningless, but was intended as an expression in general terms of the power of the Secretary to supervise and control the extensive operations of the Land Department of which he is the head. It means that, in the important matters relating to the sale and disposition of the public domain, the surveying of private land claims and the issuing of patents thereon, and the administration of the trusts devolving upon the government, by reason of the laws of Congress or under treaty stipulations, respecting the public domain, *the Secretary of the Interior is the supervising agent of the government to do justice to all claimants and preserve the rights of the people of the United States.*"

In Orchard vs. Alexander, 157 U. S., at pages 381, 382, in Stoneroad vs. Stoneroad, 158 U. S., at pages 248, 249, and in Warner Valley Stock Co. vs. Smith 165 U. S., at page 34, the same statement of the meaning of the terms "under the direction of the Secretary of the Interior" is repeated.

3rd. The means adopted by the Secretary of the Interior for the determination by him of the indemnity lands to which the railroad company is entitled under its grant are the same in all grants which provide for indemnity lands.

These means are provided for by the regulations of the Secretary of the Interior, and these regulations are designed for his aid in making his determination, and are, in substance, that a selection of the lands be made by the railroad company, and that such selections be submitted to the Secretary of the Interior by filing the selections in the Land Department, together with certain information accompanying the selections, showing the facts that entitle the railroad company to the lands.

The Secretary is authorized to make regulations which are appropriate to secure the convenient and proper administration of the grant in the selection of the indemnity lands, and to require that the regulations be complied with, *and it is for him to determine the question of fact whether the railroad company does in any case comply with the regulations.*

Revised Statutes, Sec. 2478, and Secs. 441, 453.

Knight vs. United States Land Association, 142 U. S., 161 at 178.

Kern Oil Co. vs. Clark, 31 L. D., [illegible] at [illegible], [illegible].

In Knight vs. United States Land Association, 142 U. S., at page 178, speaking of the mode in which the supervision of the Secretary of the Interior may be exercised, the Court say: "The mode in which the supervision shall be exercised in the absence of statutory direction may be prescribed by such rules and regulations as the Secretary may adopt."

The revised statutes, Sec. 2478, provides that, "The Commissioner of the General and Office, under the direction of the Secretary of the Interior, is authorized to enforce and carry into execution, by appropriate regulations, every part of the provisions of this title not otherwise specially provided for."

9th. The Court takes judicial notice of the regulations of the Land Department.

Caha vs. United States, 152 U. S., 211 at 217, 220, 221.
Wilkins vs. United States, 96 Fed., 837, 842.
United States vs. [illegible], [illegible] Fed., [illegible] at [illegible], [illegible].

The regulations are stated in Point III. of this brief, pages 11 to 16.

VIII.

There has been no approval of the selection of these lands by the Secretary of the Interior.

1st. The bill of complaint shows that the selection of the lands in question has not been approved by the Secretary of the Interior. There is not only no averment of his approval, but the statements of the bill show affirmatively that the selections had not been approved by him.

It appears from the bill (Rec. p. 5,) that the selections were made between October 16th and November 10th, 1883, by filing the list of indemnity selections alone in the land office at Duluth, and payment to the land officers of that district the fees required by law, "and said officers certified under dates of October 17th and November 9th, 1883, that said selection lists were accepted and approved," and that the lands were public lands.

The approval here referred to by the bill was the approval of the local land officers at Duluth.

The bill then states (Rec. p. 6,) *"that thereafter, on the 17th of October,* and the 9th of November, 1883, and on the 10th of October, 1887,*complying with instructions of the Secretary of the Interior, the railroad company filed in the Land Office certain lists whereby the company specified an equal quantity of lands lost from the primary or place limits equal in area to those lands described in the said selection lists before mentioned."*

"Thereafter, on June 19th, 1891, and on April 11th, 1893, *for the purpose of complying with certain other and further directions and requirements of the Secretary of the Interior, issued subsequent to the original dates of selection before mentioned, and complying with the subsequent instructions of the Secretary of the Interior,* the railroad company filed, in the United States Land Office at Duluth, certain re-arranged lists whereby the railroad company designated the particular losses of lands within the primary or place limits in lieu of which it selected each tract of land described in the several indemnity selection lists before mentioned, and particularly each tract of the lands in said Exhibit A."

The bill further states that said selection lists filed as aforesaid, and said lists of losses before mentioned, were duly transmitted to the Commissioner of the General Land Office, and the same are a part of the files of said office, *"but that no action has ever been taken upon said lists or upon the selection of said lands mentioned in said Exhibit A, aforesaid, except as hereinbefore and hereinafter set forth."*

No further statement upon the subject is thereafter set forth in the bill.

From these facts stated in the bill it appears conclusively that the Secretary of the Interior has not approved the selections.

If the approval of the local land officers was the approval of the Secretary of the Interior, as contended by the complainants, why were instructions thereafter twice issued, by the Secretary of the Interior, for additional statements to be made by the railroad company in relation to these same selections, and why did the railroad company, after such instructions were given, file other and additional lists relating to these selections?

Certainly, it was because the Secretary *required the additional instructions to be complied with before he would approve the selections.* He had not lost jurisdiction to make this requirement. He does not lose jurisdiction over the subject until patent has been actually issued conveying title to the land.

Moore vs. Robbins, 96 U. S., 530 at 532, 533.
Steel vs. Smelting Co., 106 U. S., 447 at 450, 451.
United States vs. Schurz, 102 U. S., 378 at 395, 396.
Barden vs. Northern Pac. R. R. Co., 154 U. S., 288 at 327, 330.
Michigan Land and Lumber Co. vs. Rust, 168 U. S., 589 at 593.

2nd. The complainants' *evidence* shows no approval of the selections by the Secretary. The copies of the list from the files of the Commissioner of the General Land Office put in evidence by the complainants, which have been already referred to, show no action has been taken upon the selections by the Commissioner or the Secretary.

3rd. The Supreme Court expressly declares that the approval of the Secretary cannot be inferred from his not formally rejecting the selections.

Wisconsin Cent. R. R. Co. vs. Price County, 133 U. S., 496 at 511.

4th. The order of Secretary Teller, of May 28th, 1883, expressly provides for action by the Commissioner of the General Land Office upon those lists before their approval. The order says: "In order to facilitate the work of making selections, I think you should instruct the local officers that, when clear lists of selections, free from conflict or other objection, are filed with the district officers and approved by them, said selections should at once be marked upon their books and *forwarded for final examination, leaving the ascertainment of the lands lost in place to your (the Commissioner's) office,* instead of requiring preliminary lists of such lost lands, together with the indemnity lands, tract for tract, from the company as heretofore."

12 L. D., p. 196.

The filing the lists under this order without any action in relation to them by the Commissioner of the Land Office or Secretary of the Interior, certainly did not vest in the railroad company any title to the lands. *The order itself requires the action of the Commissioner upon the lists.*

In Northern Pacific Railroad Co. vs. Miller, (7 L. D., 100,) Secretary Vilas, referring to this order of Secretary Teller, of May 28th, 1883, says (pp. 123. 124): "And, first, I think it should be observed that a mere claim of selection, not based upon such foundation as the law and the regulations of the department require, cannot give a right; the selection must be one which is both well founded in the necessity for it, and the manner of making it, and, therefore, one within the direction and approval of the Secretary of the Interior. In this case, the original selection list gave no indication of the basis upon which a right selection of this tract could be claimed. It proceeded upon the assumption that the company might 'select' as many lands as it saw fit, and make proof of its losses afterwards. This practice, was, indeed, permitted for some time in the General Land Office, and thus it has happened that some railroad companies have selected, in lieu of lost lands, and procured certification of lands much in excess in acreage of their losses for which their selections were admissible. *It was also specially allowed in the case of this company. But it was so allowed only upon condition that the basis was subsequently to be supplied, and no selection was valid until approved, after such basis should be determined. It was thus only a question of the order of procedure.*"

It thus appears, both by the terms of the order, *and the construction put upon the order by the Secretary of the Interior,* that the selection lists were not valid until the list of lands lost in the primary limits had been decided upon and determined by the Commissioner of the General Land Office as the basis for lands selected in the indemnity limits, and had been approved.

Until such basis was so determined no approval of the selection lists could be made.

The statements of the bill of complaint, and the evidence, show that no basis of lands lost in the place limits to sustain these selection lists *has ever been determined by the Land Department.*

5th. The evidence conclusively shows that the lists after having been rejected have been reinstated by order of the Commissioner of the Land Office and are awaiting the action of the Commissioner, and that it is now the purpose of the Department *to consider the lists for their approval or disapproval.*

The orders of July 12th, 1900, made by the Commissioner restoring the lists say, "the selections will now be duly considered upon their legality otherwise, and in connection with any conflicting claims or rights."

(Exhibits 31 and 32, pp. 431 and 432, and Exhibit 45, pp. 491 and 492.

IX.

The railroad company did not comply with the requirements of the Secretary of the Interior in making selections of the lands, so as to be entitled to his approval.

These requirements included the following proceedings on the part of the railroad company:

1st. The list filed must specify the particular deficiencies to supply which the selections are made. Each selection must be for a particular description of land lost in the place limits, tract for tract, in quantities not exceeding one section, *and* *the affidavit of the selecting agent attached to the list of selections must state that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner.* The selections must be made from vacant unappropriated lands within proper sections and limits *nearest the granted selections in which the loss occurred.*

The Public Domain, p. 892.
10 Copp's Land Owner, p. 154.
Circular of the Secretary of the Interior, Aug. 4, 1885, 4 L. D., 90.
Atlantic & Pac. R. R. Co., 8 L. D., 373.
Northern Pac. R. R. Co. vs. Miller, 7 L. D., 100, 124, (Aug. 2, 1888.)
Iowa R. Co., 9 L. D., 370, 375, (1889.)
Florida Central & Peninsular R. Co., 15 L. D., 529, 530, 531, (Nov. 26, 1892.)
Northern Pac. R. Co., 17 L. D., 404, 405.
Atlantic & Pacific R. Co., 17 L. D., 313, 314.
Southern Pac. R. Co. vs. McKinley, 22 L. D., 493, 495, (April 24th, 1896.)
Northern Pac. R. Co. vs. Drew, 23 L. D., 380.
Northern Pac. R. Co. vs. John O. Miller, 11 L. D., 1, 2, (July 1, 1890.)
Northern Pac. R. Co. vs. John O. Miller, 11 L. D., 428, (Nov. 19, 1890.)
Hoeft vs. St. Paul & Duluth R. Co., 15 L. D., 101, 102, 103, (July 25, 1892.)
La Bar vs. Northern Pac. R. R. Co., 17 L. D., 406 at 410.
Northern Pacific R. R. Co., 20 L. D., 187 at 189.
Wisconsin R. Co. vs. Forsythe, 159 U. S., 46 at 60.
Wood vs. Railroad Co., 104 U. S., 329 at 331.

The regulations made by the Secretary of the Interior require proof by affidavit of facts which were material and of which it was the duty of the Land Department to be informed in some manner before approval of the selections should be made.

2nd. THE SECRETARY HAD A RIGHT TO REQUIRE THE RAILROAD COMPANY TO FURNISH SUCH PROOF. HE DID REQUIRE IT TO BE FURNISHED HIM BY THE RAILROAD COMPANY.

As before stated the order of August 4th, 1885, (4 L. D., 90,) requires that the selecting agent applying to make indemnity selections, must state "in his affidavit attached to the list presented that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner. Where deficiencies exist, for which indemnity is allowed by law, the lieu selections must be made from vacant unappropriated land within proper sections and limits *nearest* the granted sections in which the loss occurred."

The order by its own terms is made to be applied to indemnity selections which had theretofore been filed.

By the explicit directions of the Secretary of the Interior, made October 14th, 1893, in the case of La Bar vs. Northern Pacific Railroad Co., (17 L. D., 406, at p. 410,) the railroad companies having pending indemnity selections were called upon to revise their lists, showing a proper basis, "for each and all lands now claimed as indemnity, the same to be arranged tract for tract in accordance with departmental requirements. * * * * *The requirements of the order of August* 4th, 1885, *should also be enforced, and the companies should be required to specify a basis, not only for the selections now pending, but for all selections heretofore approved on account of which no previous loss has been assigned.* This is as necessary to the protection of the interests of the United States, and as an aid in the adjustment of the grants, as the requirement of a specification of losses for pending selections, for without such designation on account of approved selections, it cannot be ascertained whether a particular loss now assigned has not already been fully satisfied by previous approvals."

3rd. The requirement was not complied with that the affidavit of the selecting agent attached to the list of selections must state that the specific losses for which indemnity is claimed are truly set forth and described in said list and that said losses have not heretofore been indemnified.

The bill of complaint states (Rec. p. 5,) that between the 16th of October, 1883, and the 10th of November of said year, the Northern Pacific Railroad Company selected all the lands described in Exhibit A of the bill of complaint by filing in the United States District Land Office at Duluth, Minnesota, its certain selections and thereby selected all of said lands as indemnity in lieu of other lands excepted from its grant. "The said selected lists are four in number and were numbered respectively 10, 15A-15B-and 16, the first of the aforesaid lists relating to lands within the first indemnity limits and bearing date October 17, 1883, the others relating to lands within the second indemnity limits, and bearing date October 17th, 1883, or some other date or dates to your orator unknown."

The following facts appear in respect to these lists:

List 10, which includes only a portion of the lands, less than half, described in said Exhibit A, is complainants' Exhibit 19, appearing in the Record at pages 325 to 332. It was filed October 17th, 1883, and is only a list of selections of indemnity lands in the first indemnity limits.

No reference is made to lands lost for which the selections were made.

Complainants' Exhibit 20, dated October 10th, 1887, appearing on pages 332 to 346, is composed of said List 10, and a list of the lands lost for which the selections in List 10 were made—but without arranging or designating the lands lost and selections made therefor, tract for tract. To this repetition of List 10 is appended the affidavit of Chas. B. Lambron of date October 7th, 1887, (p. 345), in which, after referring to the list of selections as having been heretofore selected by him he says, "that the specific losses for which the indemnity is claimed are truly set forth and described in this list, and that said losses have not heretofore been indemnified in any manner." *This affidavit it will be noted refers only to the lands selected by List* 10, *and to the losses for which those selections were made, as they appear in said Exhibit* 20.

Complainants' Exhibit 21 (Rec. pp. 346 to 367), dated July 19th, 1891, is composed of the selections contained in List 10 and of losses for which those selections were made arranged tract for tract. This list does not have attached to it the affidavit of the selecting agent that the specific losses for which the indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner.

The requirement of the Secretary's order is that a list be filed showing lands lost and the lands selected in the place of lands lost arranged tract for tract, for the use of the Secretary and Land Department in determining the company's rights to the particular selections and it was to this list that the affidavit was required to be attached.

The lands selected in said List 10, arranged tract for tract with the lands lost, appear only in said Exhibit 21, *and to this list no such affidavit is attached.*

List No. 15, dated Oct. 18th, 1883, is complainants' Exhibit 22 (Rec. pp. 368 to 378), and is a list of selections and list of lands lost for which the selections were made but not arranged showing lands lost and selections made, tract for tract. *There is no affidavit attached to the list made by the selecting agent or other person that "the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified."*

List 15B, dated April 11, 1893, is complainants' Exhibit No. 23, appearing in the Record at pages 379 to 405, and is a repetition of List 15, rearranged, showing the lands selected and the lands lost for which the selections are made, tract for tract. *There is no affidavit of the selecting agent attached to this list stating that the specific losses for which the indemnity is claimed are truly set forth and described, and that said losses have not heretofore been indemnified.*

List No. 16 is dated October 16th, 1883, which is complainants' Exhibit No. 24, appearing on pages 406 to 409 of the Record, and is a list of selections, and a list of lands lost, not arranged so as to show the losses for which the selections are made, tract for tract. To this list no such affidavit of the selecting agent is attached.

Second List No. 16, dated April 11th, 1893, which is complainants' Exhibit No. 25, appearing on the Record at pages 411 to 417, is a list of lands selected and a list of lands lost for which the selections are made, arranged tract for tract, *but to this list no such affidavit of the selecting agent is attached.*

It thus appears that the affidavit required by the Secretary of the Interior to be attached to the lists before his approval was not furnished by the Northern Pacific Railroad Company, as requested.

It is not an answer to say that the testimony of the complainants' witness Marvin, taken in this case, shows that losses have not been before indemnified for which the selections were made.

The Secretary had a right *to have the evidence produced before him,* which the regulations called for, in order that he might act upon the evidence.

If the railroad company might disregard this regulation it might disregard any and all regulations made by the Secretary for the selections of indemnity lands, file selections, and then come into Court, as it now does, and claim it is entitled to the lands upon evidence shown to the Court, but never produced to the Secretary; in this manner taking from the Secretary of the Interior the administration of the grant, and his determination whether the selections should be approved or not, and transferring the jurisdiction to the Court.

4th. IT IS NOT CLAIMED THAT THE LANDS SELECTED WERE NEAREST TO THE LANDS LOST.

The complainants contend that at the time the selections were made the regulations did not require that the lands selected should be nearest to the lands lost, and that such requirement is not authorized by the terms of the grant, because by the terms of the grant the indemnity lands were to be *selected* by the railroad company.

The complainants call this a belated regulation.

The fact is the regulation goes back to a time preceding the original selection of these lands by the railroad company.

On July 11th, 1883, *prior to any selection of the lands in controversy in this cause by the railroad company,* the Secretary of the Interior added to his order of May 28th, 1883, under which the complainants claim the selections were made, the further regulations and instructions to the Commissioner of the General Land Office, as follows:

"I call your attention to my letters of May 17 and 28 last, *relating to the Northern Pacific land grant, and particularly to the indemnity part of such grant.* * * * Under the authority conferred and in discharge of the duty imposed upon me by the Act, which provides that the selections shall be made under the direction of the Secretary of the Interior, I deem it best to indicate at the outset what, in my opinion, the practice should be in relation to selections. The amount of lands lost within each of the states named should be made up by selections within such State, without regard to quality, if there be sufficient within the indemnity limits for that purpose. *I do not think it was the intention of the granting Act, nor do I deem it just or equitable to the government or to the settlers, to permit the company to cull the lands within such limits, leaving portions unselected because they are poor, and then selecting other lands farther along* the line, in place of lands lost within the granted limits of those states."

The Public Domain, p. 892.
10 Copp's Land Owner, p. 154.

This instruction and regulation is made specially in reference to the Northern Pacific Railroad grant.

It thus distinctly appears that in October and November, 1883, when the railroad company first made the selections, direct and specific instructions had been given by the Secretary of the Interior, making it necessary that the lands should be selected in the indemnity limits nearest to the lands lost for which the selections were made, and forbidding *the company to cull the lands within such limits, leaving portions unselected because they were poor.*

This is followed by the circular of Secretary Lamar, of August 4th, 1885, *applying to all railroad indemnity land grants*, directing the Commissioner of the Land Office that, "Where deficiencies exist, for which indemnity is allowed by law, the lieu selections must be made from vacant unappropriated land within proper sections and limits *nearest* the granted sections in which the loss occurred. You will be careful to see that this rule is strictly complied with, *and will reject all selections not made in conformity thereto.*"

(4 L. D., 90.)

The terms of the grant to the Atlantic & Pacific Railroad, (14 U. S. Stat., pp. 294, 295), the terms of the grant to the Southern Pacific Railroad, (14 U. S. Stat., p. 289, 299,) the terms of the grant to the Texas Pacific Railroad, (16 U. S. Stat., p. 576,) and the terms of the grant to the State of California, to aid the construction of railroads, (14 U. S. Stat., p. 548,) are the same as the terms of the grant to the Northern Pacific Railroad upon this subject.

In the case of the Atlantic & Pacific Railroad Company, (8 L. D., p. 373, decided March 29th, 1889,) the Commissioner of the General Land Office rejected a list of indemnity selections containing 163,381.62 acres, made by the railroad company, on the ground that the lands selected "*are not nearest to the lost lands, as required by department instructions.*"

(Circular, 4 L. D., 90.)

This decision of the Commissioner of the General Land Office was approved by the decision of the Secretary of the Interior.

That decision covers the case of and is applicable to the four railroad land grants above mentioned. It is clearly applicable to the grant to the Northern Pacific Railroad Company, *because the latter grant is in the same terms.*

The same decision has been made in reference to the Northern Pacific Railroad Company.

In Northern Pacific Railroad Company, (17 L. D., 402,) decided by the Secretary October 19th, 1893, in appeal from the decision of the Commissioner of the Land Office, of June 17th, 1892, *which was before the last list filed by the railroad company relating to the lands in question,* the Secretary said (p. 403): "*It is a well settled principle running through all the legislation pertaining to land grants to aid in the construction of railroads, that indemnity lands must be taken nearest to the lost lands,* so that the portion of the country benefited by the building of the road may bear the burden of the grant made to aid in its construction. The coterminous principle applied to nearly all the grants, was evidently intended to accomplish this result. Were it otherwise, the company might also pass over the bad lands within the limits of its grant and pick out the best lands, which it has evidently done in the present case, if the loss named can be satisfied within the limits of its grant in the State of Idaho."

In Northern Pacific Railroad Company, (20 L. D., 187,) the Secretary of the Interior again held, March 12, 1895, "that indemnity selections made by that company must be of lands subject thereto nearest to the lands lost."

On this point he says (p. 189): "It has for years, however, been the doctrine of this department *that in all kinds of rail-*

road grants, providing for indemnity, the selections must be of lands subject thereto nearest the lands lost.//

// In general circular of instructions, relative to railroad indemnity selections, approved by Secretary Lamar, August 4, 1885, (4 L. D., 90,) it was said, among other things: "When deficiencies exist, for which indemnity is allowed by law, the lieu selections must be made from vacant unappropriated land, within proper sections and limits, nearest the granted sections in which the loss occurred. *These instructions applied to the Northern Pacific in common with other roads.* This rule was adhered to by Secretary Noble in the case of the Atlantic & Pacific Railroad Company, decided March 29th, 1889, (8 L. D., 373.) That company has a grant very similar in its provisions to the grant to the Northern Pacific Company. See also case of Chicago, St. Paul, Minneapolis and Omaha Company, 10 L. D., 147."

The Secretary then cites and quotes from the case of Wood vs. Railroad Company, 104 U. S., 329, (which is quoted below.) and adds (p. 100): "On principle and by analogy, the doctrine of that case is applicable to this and should govern."

In Wisconsin Central Railroad Co. vs. Forsythe, 159 U. S., 46, at page 60, the Court says: "So far as railroads are concerned, it is the thought not merely that the general welfare will be subserved by the construction of the road along the lines indicated, but, further, that such grant shall not be attended with any pecuniary loss to the United States; for the universal rule is to double the price of even sections within the granted limits. The expectation is that the company receiving the odd sections will take pains to dispose of them to settlers, and thus by their settlement and improvement increase the value of the even sections adjoining, and so justify the added price. To fully realize this expected benefit it is essential *that the lands taken by the company shall be as near to the line of the road as possible; and so, while selection of remote lands is permitted, it is only when and because there is a necessity of such selection to make good the amount of the grant. Obviously, therefore, an Act must be construed to realize, so far as possible, this intent and to accomplish the desired result."*

In Wood vs. Railroad Company, 104 U. S., p. 329, the grant was made to the Burlington & Missouri River Railroad Company "of every alternate section of public land (excepting mineral lands, as provided in this Act,) designated by odd numbers, to the amount of ten alternate sections per mile on each side of the road, on the line thereof, and not sold, reserved or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road was definitely fixed."

13 U. S. Stat., p. 364, Sec. 19.

The Court say (p. 331): "Although there was no express limitation of the distance from the road in which the land was to be selected, it was necessarily implied that the selection should be made of alternate sections nearest the road, of which the land had not been previously sold, reserved or otherwise disposed of. The company was not at liberty to pass beyond land open to its appropriation and take lands farther removed from its road. *In all grants which are to be satisfied out of sections along a line of a road, it is necessarily implied, in the absence of specific designation otherwise, that the land is to be taken from the nearest undisposed sections of the character mentioned.* Such grants give no license to the grantees to roam over the whole public domain lying on either side of the road, in search of land desired. The grants must be satisfied out of the first land found which meets the conditions named."

5th. THE COMPLAINANTS CONTEND THAT BECAUSE THE TERMS OF THE ACT PROVIDED THAT THE LANDS WERE TO BE "SELECTED" THE COMPANY HAS A RIGHT OF CHOICE, AND THEREFORE SUCH CHOICE MAY BE EXERCISED THROUGH THE ENTIRE LIMITS ALLOWED FOR THE INDEMNITY LANDS.

The term "select," as applied to indemnity lands, *is used in every one of the grants for railroad companies in which indemnity lands are provided for.* In those grants where the selection is required to be made of lands nearest the sections granted, or nearest the line of the road, or most contiguous to the line of the road, the statute says they are *to be selected.*

In the grant of lands to the State of Kansas, (14 U. S. Stat., p. 236, Sec. 1.) the provision is: "It shall be the duty of the Secretary of the Interior to cause to be *selected,* for the purposes aforesaid, from the public lands of the United States nearest to the sections above specified."

In the grant to the California & Oregon Railroad Company, and other companies, (14 U. S. Stat., p. 239, Sec. 2,) the provision is: "Other lands designated as aforesaid, shall be *selected* by said companies in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first-named alternate sections."

In the grant to the State of Kansas, for the benefit of the Union Pacific Railroad Company, (14 U. S. Stat., p. 289, Sec. 1,) the provision is: "Then it shall be the duty of the Secretary of the Interior to cause to be *selected,* for the purposes aforesaid, from the public lands of the United States, nearest to the sections above specified, so much land as shall be equal to the amount of such lands as the United States have sold, reserved or otherwise appropriated."

In the grant to the State of Florida, (11 U. S. Stat., p. 15, Sec. 1,) the provision is: "Then it shall be lawful for any agent or agents to be appointed by the Governor of said State, to *select,* subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified."

In the grant to the State of Iowa, (11 U. S. Stat., p. 9, Sec. 1,) the provision is: "Then it shall be lawful for any agent or agents, to be appointed by the Governor of said State, to *select,* subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified."

The same language is used in the terms of the grant to the State of Louisiana, (11 U. S. Stat., pp. 18, 19, Sec. 1,) in the grant to the State of Michigan, (11 U. S. Stat., p. 21, Sec. 1,) in the grant to the State of Minnesota, (11 U. S. Stat., p. 195, Sec. 1,) in the grant to the State of Alabama, (11 U. S. Stat., p. 17, Sec. 1,) in the grant to the State of Mississippi, (11 U. S. Stat., pp. 30, 31, Sec. 1,) and to the State of Wisconsin, (11 U. S. Stat., p. 20, Sec. 1.)

It is thus made very clear that the term "selection" has no other or different signifiication, as employed in the grant to the Northern Pacific Railroad Company, than it has in the grants above referred to. What is meant by the term "selection" is the same in each of the grants.

According to the contention and argument of the complainants the term "selection" or "select" would be a term misused and misapplied in all of the above grants, simply because the requirement of the grant was that in selecting the lands those nearest to the lands lost or to the tiers of lands granted alone were to be taken.

In neither of the grants is the term inappropriate. If there are more lands within the indemnity limits than are required to supply the losses, and two or more parcels are situated at an equal distance from the parcel lost, or from the tiers of the lands granted, selection may be made in such case between those different parcels. But the term "select" used by the grant, is evidently used in the sense of designate. In any event the indemnity lands must be designated, and when designated, the condition of the lands as to their location, and as to whether they are subject to be taken under the grant, is to be determined. The term "select" is a proper term to be used. It covers the case where there is only to be a designation made, and, also, the case where a choice may be made between different parcels of land, the designation of either of which would be proper.

6th. It is undisputed in this case that the company disregarded the direction to make the selection of the indemnity lands nearest the lands lost. No claim is made that it was complied with. The complainants contend that the direction may be disregarded.

THE QUESTION HERE IS WHETHER THE SECRETARY HAD THE RIGHT TO WITHHOLD HIS APPROVAL OF THE SELECTIONS WHICH WERE MADE IN DISREGARD OF THE REGULATION.

It has been the practice of the Land Department throughout its administration of the railroad land grants, to refuse approval where selections have been made without compliance with the regulations prescribed by the Secretary of the Interior.

Northern Pacific R. R. Co. vs. Miller, 7 L. D., 100 at 123.
Iowa R. R. Co., 9 L. D., 370 at 375
Florida Cent. & Peninsular R. R. Co., 15 L. D., 529, 530.
Atlantic & Pacific R. R. Co., 17 L. D., 313, 314.
Northern Pacific R. R. Co., 17 L. D., 404 at 405, 406.
Southern Pacific R. R. Co. vs. McKinley, 22 L. D., 493, 495.
Northern Pacific R. R. Co. vs. Drew, 23 L. D., 380, 381.
Northern Pacific R. R. Co. vs. John O. Miller, 11 L. D., 1, 2.
Northern Pacific R. R. Co. vs. John O. Miller, 11 L. D., 428, 429.
Hoeft vs. St. Paul & Duluth R. R. Co., 15 L. D., 101, 103.

Our position is not that the Secretary of the Interior can not himself investigate the facts and ascertain whether the lands have been selected nearest to the lands lost for which the selections are made, and if he so finds then approve the selections. Our position is that until such facts are found the Secretary can not approve; that such facts are neither shown by the complainants, nor are they claimed to exist; and that, therefore, the complainants are not shown to be entitled to have the selections approved.

X.

Reply to the claim of the complainants, that the selections were filed by the railroad company under the order of the Secretary of the Interior of May 28th, 1883, (12 L D., p. 196,)

and that the railroad company was not required to comply with the order of August 4th, 1885, (4 L. D., 90.)

1st. Prior to the making of the order of May 28th, 1883, the railroad company was required, in making its selections, to accompany the selections with a list of the lost lands in the place limits in lieu of which the selections were made, showing, tract for tract, lands selected for lands lost. This appears by the terms of the order itself.

12 L. D., p. 196.

It also appears in the decision of the Secretary of the Interior in the case of Minnesota Railway Extension Company, (12 L. D., p. 518,) and in La Bar vs. Northern Pacific Railroad Company, (17 L. D., pp. 408, 409.)

2nd. The order of May 28th, 1883, was made for the special purpose of opening for settlement as speedily as possible the lands within the indemnity limits, *which had been withdrawn from settlement,* and to accomplish that object, allowed the selections to be made in the first instance, without specifying the losses for which they were made, leaving the losses to be ascertained, tract for tract, to the work of the Land Department.

The expression of the order is that, "The work of adjusting the grant will go forward much more rapidly under this plan than under the former practice."

3rd. As stated above, on July 11th, 1883, prior to the filing of any of the selections in question, the Secretary of the Interior added to the order of May 28th, 1883, requiring the railroad company *to select the lands nearest to the lands within the primary limits, without culling in selecting, and leav-*

ing any lands which were subject to selection, in this manner aiding the Land Department in the adjustment of the grant, so that the lands selected in the indemnity limits would be nearest to the lands lost for which the selections were made.

The Public Domain, p. 892.
10 Copp's Land Owner, 154.

It thus appears that at the time the original selection lists were filed by the railroad company, on October 18th, 1883, the orders of May 28th, 1883, and July 11th, 1883, permitted the railroad company to file selections of indemnity lands, *which had been withdrawn from settlement, but the selections were to be made nearest to the lands lost without culling the lands selected.*

4th. The order of May 28th, 1883, did not accomplish the purpose for which it was intended, and it was revoked by the order of August 4th, 1885, which required preliminary lists to be filed by the railroad company, specifying the particular deficiencies for which indemnity is claimed, and the selections to supply the deficiencies to be made from the proper sections in the indemnity limits "nearest the granted sections in which the loss occurred," and that it should be accompanied by affidavit attached to the list that the specific losses for which indemnity is claimed are truly set forth and described in the list, and that said losses have not heretofore been indemnified in any manner.

4 L. D., p. 90.
Rec. pp. 763, 764.

This order of August 4th, 1885, is clearly by its terms made applicable to selection lists which had been already filed by any and all railroad companies.

It says in express terms: "Where indemnity selections have heretofore been made without specification of losses, you will require the companies to designate the deficiencies for which such indemnity it to be applied before further selections are allowed * * * You will be careful to see that this rule is strictly complied with, and will reject all selections not made in conformity thereto." •

5th. This order of August 4th, 1885, is held by the decisions of the Secretary of the Interior *to apply to the lists of selections which had been filed by the Northern Pacific Railroad Company prior to the date of the order,* and compliance with the order in respect to such lists has been required as a condition of the approval of the lists.

Northern Pacific R. R. Co. vs. John O. Miller, 11 L. D., 1, 2.
Darland vs. Northern Pacific R. R. Co., 12 L. D., 195, 196, 197.
Southern Minnesota R. Extension Co., 12 L. D., 518, 519.
La Bar vs. Northern Pacific R. R. Co., 17 L. D., 406 at 409, 410.

In Northern Pacific R. R. Co. vs. John O. Miller, 11 L. D., 1, a selection was made on January 30th, 1884, after the order of May 28, 1883, and before the order of August 4, 1885, by the Northern Pacific Railroad Company. Secretary Noble decided the case on July 1st, 1890, rejecting the selection for a failure of the railroad company to comply with the order of August 4th, 1885. He says (p.2) as follows:

"The claim of the Northern Pacific Railroad Company to a right to select the tract involved is based upon the third section of its granting Act (July 2, 1864, 13 Stats., 365), which provides that whenever, prior to the definite location of its line of road, any of said (granted) sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers or pre-empted, or otherwise disposed of, other lands shall be selected in lieu thereof under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers not more than ten miles beyond the limits of said (granted) alternate sections."

"The loss to its grant in the manner prescribed of a tract or tracts of land corresponding to those which it claims as indemnity is, under the stated provisions of its grant, an essential to the right of the company to so select."

"That such losses should first be shown to the satisfaction of the land department is obvious, for otherwise the indemnity claimed therefor could not properly be selected under the 'direction of the Secretary of the Interior,' or, in other words, in accordance with the Act of 1864, *supra.*

"By circular approved August 4th, 1885, (4 L. D., 90,) the various local officers were instructed as follows:"

"Before admitting railroad indemnity selections in any case, you will require preliminary lists to be filed specifying the particular deficiencies for which indemnity is claimed *and in cases where indemnity selections have heretofore been made without specification of losses, you will require the companies to designate the deficiencies for which such indemnity is to be applied before further selections are allowed.*"

"The particular loss in lieu of which the Northern Pacific Railroad Company seeks to select the land in question is not shown by the record before me, and I am advised by your office that it has failed to designate the same."

"The said application of the Northern Pacific Railroad is accordingly denied."

In Darland vs. Northern Pacific Railroad Co., 12 L. D., 195, the Northern Pacific Railroad Co. had selected land January 8th, 1885, which was seven months before the order of August 4th, 1885, was made revoking the order of May 28th, 1883.

Secretary Noble, after stating that the selections were made under the instructions of the department, of May 28th, 1883, says (pp. 196, 197): "Subsequently, on August 4, 1885, instructions were issued, requiring preliminary lists to be filed, specifying the particular deficiencies for which the indemnity is claimed, but it was also provided that, where indemnity selections had theretofore been made, without specifying the particular basis, the company should be required to designate the particular deficiencies before allowing further selections (4 L. D., 90). The company complied with these instructions as to list No. 26, making said selection legal and regular in this respect."

"In the case of Northern Pacific Raliroad Co. vs. John O. Miller (on review), 11 L. D., 428, it was held that indemnity can only be selected in lieu of a section or part of section lost in place, and the basis for such selection must be specifically designated and shown to be excepted from the grant before indemnity can be allowed, and that where a selection is made without designating the basis, the invalidity of such selection may be attacked by a settler. But the selection in that case was not protected by the order of May 28, 1883, for the reason that it had never been withdrawn, and was, therefore, not of the character of lands contemplated by said order."

"The decision of your office rejecting the final proof of Darland is affirmed, but his filing should not be cancelled, but remain subject to the rights of the company, if the selection of the company should be finally certified."

In Southern Minnesota Railway Extension Co., 12 L. D., 518, the Secretary says (pp. 518, 519): "So far as my re-search has gone, the specification of losses has always been required by the authorities of the Land Department since 1879 as preliminary to the approval of lists of indemnity land, except when Secretary Teller, on May 28, 1883, dispensed with that prerequisite in respect to the Northern Pacific Railroad alone, in the hope of thereby expediting the adjustment of that particular grant. But in authorizing this dispensation, he expressly recognized the existing rule of the department, 'requiring preliminary lists of such lost lands, together with the indemnity lands, tract for tract, from the company as heretofore.'" (12 L. R., 196.)

"Whatever may have been the practice theretofore, on August 4, 1885, by circular of the General Land Office, approved by Secretary Lamar, it was directed that such preliminary lists, specifying the particular deficiencies, should be filed in every case. And where indemnity selections had been made thertofore, without such specification of losses, the register and receiver were directed to require the companies to designate their losses, before further selections were allowed. (4 L. D., 90.)"

"Since the issue of this emphatic circular, there has been abundant opportunity for specifying the losses, on which the lists, now sent me, are based, but this the company has apparently failed to do."

"I see no sufficient reason in the present case why the company's compliance with the plain requirements of the law and the rules of the department should be waived and said lists approved; but many reasons why the law should be adhered to and the rules enforced. (Northern Pacific R. R. vs. Miller, 11 L. D., pp. 1, 428.)"

"With these views, I decline to approve the said lists, and herewith return them to you that the losses may be specified."

In La Bar vs. Northern Pacific Railroad Co., 17 L. D., 406, the order was made heretofore referred to, by the Secretary of the Interior, requiring all railroad companies having pending indemnity selections to revise their lists within six months, so that a proper basis will be shown for each and all the lands claimed as indemnity, arranged tract for tract, in accordance with the departmental requirement, *and directing that the order of August 4th, 1885, should be enforced.*

The Secretary gives the reasons for the order which he makes. He says (pp. 408, 409): "To a proper adjustment of these grants it is necessary to ascertain on account of what lands lost to the grant these pending selections are claimed, and all lands not properly claimed should no longer be reserved on account of such grants."

"Prior to the year 1879, it seems to have been the practice, due to the peculiar rulings in the matter of railroad grants then prevailing, to allow the selection of indemnity lands without a specification of the losses on account of which such selections were claimed."

"*Since the circular of November 7, 1879, however,* it has been uniformly required that the losses be specified, except in the case of the Northern Pacific grant, which was excepted from such requirement by departmental order of May 28, 1883, (12 L. D., 196,) under the belief that such course would aid a speedy adjustment and secure an early restoration of those lands not needed."

"It failed to accomplish that result and by the circular of August 4, 1885, (4 L. D., 90,) it was directed that no further selections be allowed by any railroad company until losses had been specified for all previous selections. I learn that under these several orders selections have been made, in some instances without specifying a basis, and again with the losses indiscriminately assigned without regard to the selected tracts, otherwise than that in the aggregate the area agreed."

"In the case of the Northern Pacific R. R. Co. vs. John O. Miller (on review, 11 L. D., 428) it was held that the basis for an indemnity selection must be specifically designated, and the rights of settlers can only be ascertained and protected by the enforcement of such a rule. Since said decision it has been repeatedly ruled that the losses must be specifically designated."

"In the case of the Florida Central and Peninsular R. R. Co. (15 L. D., 529) the several decisions of this department in the matter of the selection of indemnity lands under railroad land grants were reviewed, and it was held that such loss must be specified and the selection made on account thereof designated, in no place exceeding a section, the difference in area approximating the smallest legal subdivision."

"In this way each selection stands by itself, and in the event of the failure of the basis in any instance, the selection dependent thereon is readily ascertainable. * * * When indemnity lists are submitted for the approval of this department, it is required that the losses be specifically designated in the clear list submitted as the basis of patents to be issued to the companies."

"In each case it has been the practice, as I know, for your office to rearrange the lists so as to meet the requirements, where such duty had not been performed by the companies."

"This only tends to complicate the matter, as is shown in the herein question. From the lists embracing the land in question, a clear list has been prepared by your office, which was approved March 30, 1893, and since patented."

"Part of the selected tracts have been patented and part of the basis assigned in the list approved, many selections have been cancelled, and it would require much time to unravel this list so as to ascertain which of the selections are now pending, and on what basis they stand."

"It would seem that there is necessity for some positive action in the premises. Aside from the legal aspect of the case and the protection of the rights of adverse claimants, it will greatly facilitate the work of the adjustment of these grants, to exact compliance with the regulations heretofore prescribed in the matter of the selection of indemnity lands."

"*I have, therefore, to direct that you call upon all railroad companies having pending indemnity selections to revise their lists within six months from the date of your order,* so that a proper basis will be shown for each and all lands now claimed as indemnity, the same to be arranged tract for tract in accordance with departmental requirements, and that all tracts formerly claimed for which a particular basis has not been assigned in the manner prescribed, at the expiration of said six months, be disposed of under the terms of the orders restoring indemnity lands without regard to such previous claim."

"*The requirements of the order of August* 4, 1885, *should also be enforced, and the companies should be required to specify a basis not only for the selections now pending, but for all selections heretofore approved on account of which no previous loss has been assigned.*"

"This is as necessary to the protection of the interests of the United States, and as an aid in the adjustment of the grants, as the requirement of a specification of losses for pending selections, for without such designation on account of approved selections, it cannot be ascertained whether a particular loss now assigned has not already been fully satisfied by previous approvals."

"To bind the companies they must make their own selections, which necessitates the statement of a basis on which such selections rest, and while they are to be made under the direction of the Secretary of the Interior, it is not contemplated that the work is thereby transferred and added to the duties of your office."

"*The regulations in the matter of the selection of indemnity lands must therefore be strictly enforced*, and if the losses assigned for previous approvals are carefully examined to the end that a good basis is shown to exist for each tract heretofore received as indemnity, and are not duplicated in the losses assigned for pending selections, the grants will practically adjust themselves."

6th. The order of May 28, 1883 did not dispense with and was not intended to dispense with the determination of the proper facts by the Secretary of the Interior before approval should be made of the selections, or with any of the requirements which are made, either by the statute or by the regulations of the Land Department, as a condition of approval.

Before any approval, the Secretary was required, as stated in the case of Wisconsin Central Railroad Co. vs. Price County, 133 U. S., at page 511, "to determine, in the first place, whether there were any deficiencies in the land granted to the company which were to be supplied from indemnity lands; and, in the second place, whether the particular indemnity lands selected could be properly taken for those deficiencies. In order to reach a proper conclusion on these two questions, he had also to inquire and determine whether any lands in the place limits had been previously disposed of by the government, or whether any pre-emption or homestead rights had attached before the line of the road was definitely fixed. There could be no indemnity unless a loss was established. And in determining whether a particular selection could be taken as indemnity for the losses sustained, he was obliged to inquire into the condition of those indemnity lands, and determine whether or not any portion of them had been appropriated for any other purpose, and if so, what portion had been thus appropriated, and what portion still remained. This action of the Secretary was required, not merely as supervisory of the action of the agent of the State, but for the protection of the United States against an improper appropriation of their lands."

The regulations made by the Secretary of the Interior from time to time, specifying the acts to be done by the railroad company in making its selections, are designed to aid and facilitate the work of the Secretary of the Interior in ascertaining the facts which were necessary to be determined by him as a condition of his approval.

In Northern Pacific Railroad Company vs. Miller, 7 L. D., 100, Secretary Vilas, on August 2nd, 1888, in a very carefully prepared opinion, says upon this subject as follows (pp. 123, 124): "The selection must be one which is both well founded in the necessity for it and the manner of making it, and, therefore, one within the direction and approval of the Secretary of the Interior. In this case the original selection list gave no indication of the basis upon which a right of selection of this tract could be claimed. It proceeded upon the assumption that the company might 'select' as many lands as it saw fit, and make proof of its losses afterwards. This practice was, indeed, permitted for some time in the General Land Office, and thus it has happened that some railroad companies have selected, in lieu of lost lands, and procured certification of lands much in excess in acreage of their losses for which the selections were admissible. It was also specially allowed in the case of this company. *But it was so allowed only upon condition that the basis was subsequently to be supplied, and no selection was valid until approved after such* *basis should be determined. It was thus only a question of the order of procedure."*

"This practice was of doubtful validity, at least to give a right from date of first selection, and was changed some time since, by departmental regulation. The Act is explicit that, whenever, prior to the definite location of the line, any of said sections, or parts of sections, shall have been granted, sold, reserved, occupied by homestead settlers or pre-empted, or otherwise disposed of, other lands shall be selected by said company *in lieu thereof*, under the direction of the Secretary of the Interior, etc., etc."

"Manifestly it was necessary to point out the section, or the part of a section, which had thus been lost to the grant, and the manner of its loss, in order to authorize the taking of another tract of land in place of it. The department ought, before approval of a selection, first to determine whether the land lost to the grant was so previously appropriated as to furnish the basis of a selection, and it ought to be particularly shown for what specific lands lost specific selections were made. *Until these facts appear the company has not established the right to appropriate from the body of lands open to its choice, but is confined to those specifically granted."*

"In accordance with this rule, my predecessor (Mr. Lamar), on the 4th of August, 1885, approved a circular from your office to the local officers, in which they were directed as follows:

'Before admitting railroad indemnity selections in any case, you will require preliminary lists to be filed specifying the particular deficiencies for which indemnity is claimed. * * * Where indemnity selections have heretofore been made without specification of losses, you will require the companies to designate the deficiencies for which such indemnity is to be applied before further selections are allowed.'

"It was in obedience to the last clause that this company filed, on the 25th of October, 1887, the list of particular deficiencies upon which the claim of selections in list number two before mentioned was based. That list excellently illustrates the necessity for the rule mentioned. Since 1883, the claim of this company to take the 58,000 acres in list number two has remained a cloud upon all the lands embraced within it. Yet, when called upon to specify particular lands lost from the granted limits, for which such a right of selection can exist, only 4,011 acres are shown, except by claiming indemnity for about 55,000 acres of lands, for the most part not particularly defined, lying within the Yakima Indian Reservation."

7th. From the orders and decisions above referred to, the following facts appear in relation to the claim that the selections were filed under the order of May 28th, 1883, and that the railroad company was not required to comply with the order of August 4th, 1885:

First. After the order of May 28th, 1883, was made, and *prior to* the filing of any of the selections, the Secretary of the Interior, by his order of July 11, 1883, required the railroad company, in making its selections, to select the lands nearest to the lands within the primary limits, without culling in selecting, and leaving no lands which were subject to selection, so that the lands selected would be nearest the lands lost for which the selections were made, thus making it necessary, in order to comply with the order of May 28, 1883, to make the selections from the lands which lay nearest to the lands lost for which the selections were made, and without culling the lands.

This requirement was not complied with.

Second. The order of August 4th, 1885, revoked the order of May 28th, 1883, and required the railroad company to file lists specifying the particular deficiencies for which indemnity is claimed, and required the selections to supply the deficiencies to be made from proper sections in the indemnity limits nearest the granted sections in which the loss occurred, *and that it should be accompanied by affidavit*, attached to the list that the specific losses for which indemnity is claimed are truly set forth and described in the list, and that said losses have not been heretofore indemnified in any manner, and that this order of August 4th, 1885, applies to the selections which have theretofore been made by the company under said order of May 28, 1883, and that this order was not complied with by the company.

Third. There is no claim in the bill of complaint that the company acted under or complied with the order of May 28th, 1883, *in filing its selections, or that it acquired any rights to the lands under said order.*

The case made by the bill is that *it complied in all respects with the instructions of the Secretary of the Interior*, and under his direction made its selections between October 16th, 1883, and November 10th of said year, and thereafter, on the 17th of October and 9th of November, 1883, and the 10th of October, 1887, complying with other and further instructions of the Secretary, the company filed certain lists whereby the company specified an equal quantity of lands lost in the primary limits of said grant, equal in area to those lands described in said several selection lists heretofore mentioned, and that on June 19, 1891, and April 11, 1893, the railroad company, "insisting and maintaining that its prior selections of the lands described in said Exhibit A hereto annexed were in all respects valid and sufficient, and for the purpose of complying with certain other and further directions and requirements of the Secretary of the Interior, issued subsequent to the original dates of selection heretofore mentioned, *and complying in all respects with said subsequent instructions of the Secretary of the Interior*, filed in said United States District Land Office, at Duluth, Minnesota, certain rearranged lists wherein and whereby said railroad company designated the particular losses of lands within the primary or place limits of said grant, in lieu of which it selected each tract of land described in the several indemnity selection lists hereinbefore mentioned, and particularly each tract of lands in the aforesaid Exhibit A described."

(Rec. pp. 5 and 6, paragraph VI. and VII.)

The bill then states as follows (pp. 6 and 7): "Your orators further show that each of the tracts described in said several indemnity selection lists, and each of the tracts described in said Exhibit A, was selected by said railroad company in lieu of a tract or tracts of corresponding size situate within the primary or place limits of the original grant to said railroad company, within the State of Minnesota, which had been lost to the said railroad company by reason of having been granted, sold, reserved, occupied, pre-empted, or otherwise disposed of prior to the time when that part of the line of said road lying opposite the same had been finally fixed and located."

The bill then states (Rec. p. 8, paragraphs VIII and IX) that said selection lists and said lists of losses "were duly transmitted to the Commissioner of the General Land Office, and that the same are now parts of the files in said office, but that no action has ever been taken upon said lists or upon the selection of said lands mentioned in Exhibit A, aforesaid, except as hereinbefore and hereinafter set forth."

"And your orators further show that by *virtue of the matters hereinbefore set forth*, the said Northern Pacific Railroad Company became the owner and entitled to the possession of all the lands in the said Exhibit A hereto annexed described."

It thus distinctly appears by the bill of complaint that the only ground upon which the right of the company to the lands is placed is this, viz.: That the railroad company complied *with all the instructions of the Secretary of the Interior, in the selections of the lands*, and that each of the tracts described in said Exhibit A was selected in lieu of a tract or tracts of corresponding size situate within the primary or place limits of the original grant to said railroad company within the State of Minnesota which had been lost to the company.

The evidence does not sustain the case thus made by the bill of complaint. Compliance with all of the instructions of the Secretary of the Interior is not shown. The failure to comply is shown as above pointed out.

XI.

The court has no jurisdiction in this case to determine whether the railroad company is entitled to have the selections approved, nor to determine that there is such deficiency in the grant as to entitle the company to the lands. Neither has the court jurisdiction to determine whether the defendants are entitled to the benefits of the Act of July 1, 1898.

Whether the lands were subject to selection under the grant, and whether they were selected under the regulations of the Secretary of the Interior, and whether the entries of the lands by the defendants' grantors were such as entitled them to the benefits of the Act of July 1, 1898, are facts to be determined by the Secretary of the Interior.

The jurisdiction to make such determination is exclusively in him. They are judicial questions to be determined upon an investigation of facts to be made by him.

His decision upon questions of law which may be involved in his action is subject to review by the Courts, but this can only be done upon facts which are found by the Secretary, or upon facts which are conceded, or upon facts which are established without dispute before him.

It is only by taking the facts so determined that this Court has jurisdiction to pass upon the legal questions which have been decided by the Secretary in the exercise of his jurisdiction in the administration of the railroad grant. The Court does not have jurisdiction to determine the facts.

Where the claims of the parties are pending before the Secretary and no decision has been made by him, the Court can not act in his stead.

Where the Secretary of the Interior has made a decision and there was involved a mixed question of law and fact, and the Court cannot separate it so as to detemine what the mistake of law is, the decision of the Secretary is conclusive.

United States vs. Northern Pac. R. Co., 95 Fed., 864 at 870.
James vs. Germania Iron Co., 107 Fed., 597 at 600, 601.
Marquez vs. Frisbie, 101 U. S., 473 at 475, 476.
Steel vs. Smelting Co., 106 U. S., 447, 450, 451.
Quinby vs. Conlan, 104 U. S., 420 at 425
Barden vs. Northern Pac. R. Co., 154 U. S., 288 at 326-331.
Knight vs. U. S. Land Assn., 142 U. S., 161 at 176, 178 and 181.
Smelting Co. vs. Kemp, 104 U. S., 636 at 640, 641.
Heath vs. Wallace, 138 U. S., 573 at 585
Wisconsin Central R. Co. vs. Price County, 133 U. S., 496 at 511.
United States vs. Missouri, etc., R. Co., 141 U. S., 358 at 375.
Bishop of Nesqually vs. Gibbon, 158 U. S., 155 at 166.
United States vs. California, etc., Land Co., 148 U. S., 31 at 43.
Moore vs. Robbins, 96 U. S., 530 at 535.
Mich. Land & Lumber Co. vs. Rust, 168 U. S., 589, 592.

Brown vs. Hitchcock, 173 U. S., 473 at 477.
Clark vs. Herington, 186 U. S., 206 at 210.
Cosmos Exploration Co. vs. Gray Eagle Oil Co., 112 Fed., 4, 7, 8.
Savage vs. Worsham, 104 Fed., 18.
King vs. McAndrews, 111 Fed., 860.
Bockfinger vs. Foster, 23 Sup. Ct. Reporter 836, 190 U. S., 116.
Kirwan vs. Murphy, 189 U. S., 35
Germania Iron Co. v United States, 165 U.S., 379 at 382.

In United States vs. Northern Pacific R. Co., 95 Fed., 864 at 870, the Circuit Court of Appeals says: "The rule, broadly stated, is that the land department has jurisdiction over every case in which the control and disposition of the land is intrusted to its care, and that its judgment in such a case, whether right or wrong, conveys the legal title to the patentee, and is valid, unless avoided for error, mistake or fraud. * * * * Its decision of a question of fact, however, is conclusive, even in a direct proceeding to set aside the patent, unless it is first made to appear clearly that its adjudication was caused by a plain mistake; or was induced by fraud or perjury. There is no general appeal from the officers of the land departments to the Courts; and the latter cannot review the decisions of questions of fact rendered by those officers in the absence of convincing proof that they were induced by fraud or mistake."

In James vs. Germania Iron Co., 107 Fed., 597 at 600, 601, the Circuit Court of Appeals says: "The land department of the United States is a quasi judicial tribunal, invested with authority to hear and determine claims to the public lands subject to its disposition, and its decisions of the issues presented at such hearings are impervious to collateral attack, and presumptively right."

Then, speaking upon the subject of a correction of a decision of the land department in behalf of a party, the Court says: "He may avoid this decision and charge the legal title derived from the patent which they issue with his equitable right to it on either of two grounds. 1st. That upon the facts found, conceded or established without dispute, at the hearing before the department, its officers fell into an error in the construction of the law applicable to the case which caused them to refuse to issue the patent to him, and to give it to another, (citing authorities,) or, 2nd, that through fraud or gross mistake they fell into a misapprehension of the facts proved before them, which had the like effect (citing authorities). If he would attack the patent on the latter ground, and avoid the department's finding of facts, however, *he must allege and prove not only that there was a mistake in the finding, but the evidence before the department from which the mistake resulted, the particular mistake that was made, the way in which it occurred, and the fraud, if any, which induced it, before any Court can enter upon the consideration of any issue of fact determined by the officers of the department at the hearing.*"

In Marquez vs. Frisbie 101 U. S., at 475, 476, speaking upon this subject, the Court says: "The rule which governs the Courts in the effort to correct any error in such decision has been so repeatedly stated here as to leave no room for doubt or misconstruction. That principle is that 'the decision of the officers of the land department, made within the scope of their authority, on questions of this kind, is, in general, conclusive everywhere, except when considered by way of appeal within that department, and that, as to the facts on which their decision is based, in the absence of fraud or mistake, that decision is conclusive even in courts of justice, when the title afterwards comes in question. But that in this class of cases, as in all others, there exists in the Courts of Equity the jurisdiction to correct mistakes, to relieve against frauds and impositions, and in cases where it is clear that these officers have, by mistake of the law, given to one man the land which, on the undisputed facts, belonged to another, to give appropriate relief.' (Citing authorities.)

"As we have already said, the argument of counsel is that the bill which was demurred to makes a case of mistake, and of fraud and imposition, within the meaning of these decisions."

"Let us inquire first into the alleged mistake of law by the land department."

"The language of this Court in Moore vs. Robbins, cited above, is that equity will interfere 'when it is *clear* that these officers have, by a mistake of the law, given to one man the land which, on the undisputed facts, belonged to another.'"

"This means, and it is a sound principle, that where there is a mixed question of law and of fact, and the Court cannot so separate it as to see clearly where the mistake of law is, the decision of the tribunal to which the law has confided the matter is conclusive."

The decision in Marquez vs. Frisbie is followed and restated in Vance vs. Burbank, 101 U. S., 514 at 519; United States vs. Atherton, 102 U. S., 372 at 375; Baldwin vs. Stark, 107 U. S., 463 at 465; Maxwell Land Grant Case, 121 U. S., 325 at 380; Bishop of Nesqually vs. Gibbon, 158 U. S., 155 at 166.

In Barden vs. Northern Pacific R. Co., 154 U. S., p. 288, the question was upon the construction of the grant to the Northern Pacific R. Co. relating to mineral lands which, by the terms of the grant, were excepted therefrom. The contention of the railroad company was that unless lands were known to be mineral at the time of the definite location of the road, they were not excepted from the grant.

The Court held that whether the lands were mineral or not mineral was to be determined by the Secretary of the Interior, in this manner determining whether the lands belonged or did not belong to the railroad company under the grant. In deciding this point, the Court, by Justice Field, says (pp. 326 and 327): "*The law places under the supervision of the Interior Department and its subordinate officers, acting under its direction, the control of all matters affecting the disposition of public lands of the United States, and the adjustment of private claims to them under the legislation of Congress.* It can hear contestants and decide upon the respective merits of their claims. It can investigate and settle the contentions of all persons with respect to such claims. It can hear evidence upon and determine the character of lands to which different parties assert a right; and when the controversy before it is fully considered and ended, it can issue the rightful claimant the patent provided by law, specifying that the lands are of the character for which a patent is authorized. It can thus determine whether the lands called for are swamp lands, timber lands agricultural lands or mineral lands, and so designate them in the patent which it issues. The Act of Congress making the grant to the plaintiff provides for the issue of a patent to the grantee for the land claimed, and as the grant excludes mineral lands in the direction for such patent to issue, the land office can examine into the character of the lands and designate it in its conveyance."

"It is the established doctrine, expressed in numerous decisions of this Court, that wherever Congress has provided for the disposition of any portion of the public lands, of a particular character, and authorizes the officers of the land department to issue a patent for such land upon ascertainment of certain facts, *that department has jurisdiction to inquire into and determine as to the existence of such facts, and* *in the absence of fraud, imposition or mistake, its determination is conclusive against collateral attack.*"

Justice Field, in the same connection, referring to the decision of the Court in Smelting Company vs. Kemp, 104 U. S., at pp. 640 and 641, says (pp. 327, 328): "In Smelting Company vs. Kemp, 104 U. S., 636, 640, 641, this Court thus spoke of the land department in the transfer of public lands: 'The patent of the United States is the conveyance by which the nation passes its title to portions of the public domain. For the transfer of that title the law has made numerous provisions, designating the persons who may acquire it and the terms of its acquisition. That the provisions may be properly carried out the land department, as part of the administrative and executive branch of the government has been created to supervise all the various proceedings taken to obtain the title from their commencement to their close. In the course of their duty, the officers of that department are constantly called upon to hear testimony as to matters presented for their consideration, and to pass upon its competency, credibility and weight. In that respect they exercise a judicial function, and therefore it has been held in various instances by this Court that their judgment as to matters of fact properly determinable by them is conclusive, when brought to notice in a collateral proceeding. *Their judgment in such case is like that of other special tribunals upon matters within their exclusive jurisdiction, unassailable except by a direct proceeding for its correction and annulment.*' "

Referring to the decision in Heath vs. Wallace, 138 U. S., 573, 585, Justice Field says (pp. 328 and 329):

"In Heath vs. Wallace, 138 U. S., 573, 585, it was held that 'the question whether or not lands returned as 'subject to periodical overflow' are 'swamp and overflowed lands,' is a question of fact properly determinable by the land department.' And Mr. Justice Lamar added: 'It is settled by an unbroken line of decisions of this Court in land jurisprudence that the decisions of that department upon matters of fact within its jurisdiction are, in the absence of fraud or imposition, conclusive and binding on the Courts of the country.' *If the land department must decide what lands shall not be patented because reserved, sold, granted or otherwise appropriated, or because not free from pre-emption or other claims or rights at the time the line of the road is definitely fixed,* it must also decide whether lands are excepted because they are mineral lands. It has always exercised this jurisdiction in patenting lands which were alleged to be mineral, or in refusing to patent them because the evidence was insufficient to show that they contained minerals in such quantities as to justify the issue of the patent. If, as suggested by counsel, when the Secretary of the Interior has under consideration a list of lands to be patented to the Northern Pacific Railroad Company, it is shown that part of said lands contain minerals of gold and silver discovered since the company's location of its road opposite thereto, he would not perform his duty, stated in Knight vs. Land Association, 142 U. S., 161, 178, as the 'supervising agent of the government to do justice to all claims and preserve the rights of the people of the United States,' by certifying the list until corrected in accordance with the discoveries made known to the department. He would not otherwise discharge the trust reposed in him in the administration of the law respecting the public domain."

Again, on page 329, Justice Field quotes from the case of Central Pacific R. R. Co. vs. Valentine, 11th L. D., pp. 238 and 246, this language used by Secretary Noble (see pages 329 and 330): "The very fact, if it be true, that the office of the patent is to define and identify the land granted, and to evidence the title which vested by the Act, *necessarily implies that there exists jurisdiction in some tribunal to ascertain and determine what lands are subject to the grant and capable of passing thereunder. Now, this jurisdiction is in the land department, and it continues, as we have seen, until the lands have been either patented or certified to or for the use of the railroad company."*

Justice Field adds, as follows (p. 330): "The fact remains that under the law the duty of determining the character of the lands granted by Congress, and stating it in instruments transferring the title of the government to the grantees, reposes in officers of the land department."

In Knight vs. U. S. Land Association, 142 U. S., at p. 181, speaking upon the subject of the jurisdiction of the Secretary of the Interior, Justice Lamar says: "The Secretary is the guardian of the people of the United States over the public lands. The obligations of his oath of office oblige him to see that the law is carried out, and that none of the public domain is wasted or is disposed of to a party not entitled to it. *He represents the government, which is a party in interest in every case involving the surveying and disposal of the public lands."*

In Wisconsin R. R. Co. vs. Price County, 133 U. S., 496, the question in the case was of the necessity of the approval by the Secretary of the Interior of the selection of indemnity lands by the railroad company.

In giving the reasons why such approval is required, Justice Field says (p. 511): "His action in that matter was not ministerial, but judicial. *He was required to determine, in the first place, whether there were any deficiencies in the land granted to the company which were to be supplied from indemnity lands; and, in the second place, whether the particu-*

lar indemnity lands selected could be properly taken for those deficiencies. In order to reach a proper conclusion on these two questions, he had also to inquire and determine whether any lands in the place limits had been previously disposed of by the government, or whether any pre-emption or homestead rights had attached before the line of the road was definitely fixed. There could be no indemnity unless a loss was established. And in determining whether a particular selection could be taken as indemnity for the losses sustained, he was obliged to inquire into the condition of those indemnity lands, and determine whether or not any portion of them had been appropriated for any other purpose, and if so, what portion had been thus appropriated and what portion still remained. This action of the Secretary was required, not merely as supervisory of the action of the agent of the State, *but for the protection of the United States against an improper appropriation for their lands.* Until the selections were approved there were no selections in fact, only preliminary proceedings taken for that purpose; and the indemnity lands remained unaffected in their title."

This language is repeated and adopted in the case of United States vs. Missouri, etc., R. R., 141 U. S., at 375 and 376, in deciding that the approval of selections of indemnity lands by the Secretary of the Interior is necessary to give effect to the selections.

In Bockfinger vs. Foster, 190 U. S., 116, after reviewing decisions upon the subject of maintaining suits to establish rights to lands before the title has been conveyed by the United States the Court say: "Both the *Wilcox* and *Schurz Cases* recognize the principle that after the title to public lands has passed from the United States, that is, after the Land Department has performed the last act in the series necessary to pass the title of the government, the courts will, as between parties asserting conflicting rights in such lands, determine, by appropriate judicial proceedings, which of the parties has the better right. But these cases equally recognize *the principle that the courts will not interfere with the Land Department in its control and disposal of the public lands, under the legislation of Congress, so long as the title in any essential sense remains in the United States.*"

In Cosmos Exploration Co. vs. Gray Eagle Oil Co., 112 Fed., p. 4, decided in the Court of Appeals the right to land was involved which had been selected by the complainant's assignor under the provisions of the Forest Reservation Act of 1897, (30 U. S. Stat., 36,) and on the part of the defendants under the mining laws. The legal title of the land was in the United States, and the claims of the parties in the land department were undecided.

On demurrer to the bill of complaint the Court say (pp. 7, 8):

"The demurrer interposed by defendants, questions the jurisdiction of the Circuit Court. We are of opinion that the Federal Courts are without jurisdiction to entertain a suit to determine the respective rights of the parties to any land to which the title remains in the government of the United States, in regard to which, as shown by the averments of the present bill, a contest between the parties is pending in the land department of the government. In Savage vs. Worsham, (C. C.,) 104 Fed., 18, Judge Ross said: 'It would seem from the bill that the title to the land in question is still in the United States, and that the contest beween complainant and respondent in respect to it is yet pending in the land department. If so, it is clear that the suit cannot be maintained. After the United States has parted with its title and the individual has become vested with it, the equities subject to which he holds may be enforced, but not before.' Johnson vs. Towsley, 13 Wall., 72, 20 L. Ed., 485; Shepley vs. Cowan, 91 U. S., 330, 23 L. Ed., 424; Marquez vs. Frisbie, 101 U. S., 473, 25 L. Ed., 800.'"

In Savage vs. Worsham, 104 Fed., 18, a bill was filed to determine the right of the complainant to land where the claims of the parties were still pending in the land department. In deciding the case the Court say:

"If the complainant relies upon a mistake of law on the part of the officers of the land department, the bill must contain a clear statement of such mistake, and if fraud is relied upon, the facts constituting the fraud must be set out. It needs no argument to show that the mere use of the words 'fraud' and 'fraudulent' to stigmatize acts which are adverse to complainant's view of his own rights is insufficient."

"It may be added that it would seem from the bill that the title to the land in question is still in the United States, and that the contest between complainant and respondent in respect to it is yet pending in the land department. If so, it is clear that the suit cannot be maintained."

In Michigan Land & Lumber Co. vs. Rust, 168 U. S., 589, the question of the power of the land department over the administration of the Swamp Land Act of 1850 was involved. The opinion of the Court was delivered by Mr. Justice Brewer, and upon the question of the jurisdiction of the land department, the opinion is as follows (pp. 592, 593, 594):

"Generally speaking, while the legal title remains in the United States, the grant is in process of administration and the land is subject to the jurisdiction of the land department of the government. It is true a patent is not always necessary for the transfer of the legal title. Sometimes an Act of Congress will pass the fee. *Strother* vs. *Lucas*, 12 Pet., 410, 454; *Grignon's Lessee* vs. *Astor*, 2 How., 319; *Chouteau* vs. *Eckhart*, 2 How., 344, 372; *Glasgow* vs. *Hortiz*, 1 Black, 595; *Langdeau* vs. *Hanes*, 21 Wall., 521; *Ryan* vs. *Carter*, 93 U. S., 78. Sometimes a certification of a list of lands to the grantee is declared to be operative to transfer such title, Rev. Stat., Sec. 2449; *Frasher* vs. *O'Connor*, 115 U. S., 102; but wherever the granting Act specially provides for the issue of a patent, then the rule is that the legal title remains in the government until the issue of the patent, *Bagnell* vs. *Broderick*, 13 Pet., 436, 450; and while so remaining the grant is in process of administration, and the jurisdiction of the land department is not lost."

"It is, of course, not pretended that when an equitable title has passed, the land department has power to arbitrarily destroy that equitable title. It has ~~no~~ jurisdiction, however, after proper notice to the party claiming such equitable title, and upon a hearing, to determine the question whether or not such title has passed. *Cornelius* vs. *Kessel*, 128 U. S., 456; *Orchard* vs. *Alexander*, 157 U. S., 372, 383; *Parsons* vs. *Venzke*, 164 U. S., 89. In other words, the power of the department to inquire into the extent and validity of the rights claimed against the government does not cease until the legal title has passed. 'A warrant and survey authorize the proprietor of them to demand the legal title, but do not, in themselves, constitute a legal title. Until the consummation of the title by a grant, the person who acquires an equity holds a right subject to examination.' *Miller* vs. *Kerr*, 7 Wheat., 1, 6. After the issue of the patent the matter becomes subject to inquiry only in the Courts and by judicial proceedings. *United States* vs. *Stone*, 2 Wall., 525, 535; *Moore* vs. *Robbins*, 96 U. S., 530; *United States* vs. *Schurz*, 102 U. S., 378, 396; *Bicknell* vs. *Comstock*, 113 U. S., 149, 151; *Iron, Silver Mining Co.* vs. *Campbell*, 135 U. S., 286; *Williams* vs. *United States*, 138 U. S., 514. This jurisdiction of the department has been maintained in cases of pre-emption where the entire purchase money has been paid and a receivers' final certificate issued. *Orchard* vs. *Alexander,* 157 U. S., 372, and cases cited in the opinion; *Parsons* vs. *Venzke,* 164 U. S., 89."

"In *Knight* vs. *United States Land Association,* 142 U. S., 161, is a full discussion by Mr. Justice Lamar of the power of the Secretary of the Interior over proceedings in respect to the disposition of public lands, and on page 178 it is said, as illustrative of the scope of that power: 'For example, if, when a patent is about to issue, the Secretary should discover a fatal defect in the proceedings, or that by reason of some newly ascertained fact the patent, if issued, would have to be annulled, and that it would be his duty to ask the Attorney General to institute proceedings for its annullment, it would hardly be seriously contended that the Secretary might not interfere and prevent the execution of the patent. He could not be obliged to sit quietly and allow a proceeding to be consummated, which it would be immediately his duty to ask the Attorney General to take measures to annul.' And, again, on page 181 is this language: 'The Secretary is the guardian of the people of the United States over the public lands. The obligations of his oath of office oblige him to see that the law is carried out, and that none of the public domain is wasted or disposed of to a party not entitled to it. He represents the government, which is a party in interest in every case involving the surveying and disposal of the public lands.' See also *Orchard* vs. *Alexander,* 157 U. S., 372, 381, 382; *Warner Valley Stock Company* vs. *Smith,* 165 U. S., 28, 34."

In Brown vs. Hitchcock, 173 U. S., 473, at 477, after reaffirming the decision in Michigan Land & Lumber Co. vs. Rust, the Court say: "As a general rule no mere matter of administration in the various Executive Departments of the Government can, pending such administration, be taken away ~~form~~ from such Departments and carried into the courts; those Departments must be permitted to proceed to the final accomplishment of all matters pending before them, and only after that disposition may the courts be invoked to inquire whether the outcome is in accord with the laws of the United States."

These cases are conclusive upon the point that the findings of the facts which are necessary to be determined in order that the approval of indemnity selections may be made by the Secretary, and also to determine whether the grant is deficient, is a judicial finding which must be made by the Secretary, and that his jurisdiction upon that subject is exclusive.

They are also conclusive that the administration of the Act of July 1, 1898, and the determination of the facts which entitle a party to its benefits are within the like jurisdiction of the Secretary of the Interior. That Act expressly requires the Secretary of the Interior to determine the lands within the Act to be relinquished by the Railway Company.

2nd. The determination of the question whether the grant is deficient, requires the determination of these facts, viz.: *The entire length of the road as it is actually constructed; what are the place limits and what are the indemnity limits; the entire quantity of lands to which the railroad company is entitled under the grant; the entire quantity of lands lost within the primary or place limits prior to July* 2, 1864, *on the whole line of the road as actually constructed; the entire quantity of lands lost subsequent to July* 2, 1864, *and prior to the definite location of the route of the road upon the whole line of the road; the entire quantity of lands within the indemnity limits upon the whole length of the road as actually constructed, subject to selection as indemnity lands; and the entire quantity of lands within the second indemnity limits subject to selection within the State of Minnesota.*

3rd. Whether there is a deficiency in the grant must be determined by the length of the road as it was actualy constructed, and not by its length as located by the map of definite location.

> Cedar Rapids, etc., R. Co. vs. Herring, 110 U. S., 27 at p. 35.
> Scott vs. Kansas Pacific R. Co., 5 L. D., 468 at 472, 473.

4th. The manner in which the place limits of the grant and the indemnity limits of the grant are determined, is specified in Scott vs. Kansas Pacific R. Co., 5 L. D., pp. 468 and 469.

5th. The lands subject to selection within the first indemnity limits are applicable to supply the losses which occured both prior to July 2, 1864 and subsequent to that date, and prior to the location of the definite route of the road throughout the whole line of the road.

6th. State boundaries are not observed in the selection of lands within the first indemnity limits, but the rule is to be observed that the lands selected must be the lands nearest to the lands lost for which the selection is made.

> Northern Pacific R. Co., 8 L. D., p. 13.
> Northern Pacific R. Co., 17 L. D., p. 404 at p. 406.
> Northern Pacific R. Co., 20 L. D., 187 at 189 and 190.
> Northern Pacific R. Co. vs. Shepherdson, 24 L. D., 417 and 418.
> Gaffin ~~Hoggan~~ vs. Northern Pacific R. Co., 26 L. D., 312 at 317.
> Northern Pacific R. Co., 21 L. D., 412 at 423.
> Northern Pacific R. Co. vs. Larson, 19 L. D., 233 at 236.
> Northern Pacific R. Co. vs. Drew, 23 L. D., 380 at 381.

7th. All the lands in the first indemnity limits are to be exhausted throughout the entire length of the road before any resort can be had to the lands in the second indemnity limits.

8th. If, after the lands in the first indemnity limits are exhausted there remain losses of lands which occurred in Minnesota subsequent to July 2, 1864, and prior to the definite location of the route, resort to selections to supply such losses may be made to the lands in the second indemnity limits in Minnesota.

13th U. S. Stat., p. 367, Sec. 3.
16 U. S. Stat., p. 378.
Northern Pacific R. Co. vs. Halverson, 10 L. D., p. 15 at pp. 16 and 17.
Northern Pacific R. Co. vs. Bass, 13 L. D., 201 a 202.
Northern Pacific R. Co. vs. Larson, 19 L. D., 233 at 236.
Northern Pacific R. Co. vs. Drew, 23 L. D., 380 at 381.
Grunewald vs. Northern Pacific R. Co., 24 L. D., 195 at 199.

9th. *In case there are more lands in the second indemnity limits than are required to supply all losses occurring within the primary or place limits in Minnesota subsequent to July* 2, 1864, *and prior to the definite location of the road, the grant is not deficient in Minnesota, and selection of the lands in the second indemnity limits must be made under the rule that only those lands shall be selected which are nearest to the lost land for which the selection is made.*

Speaking upon the subject of the selections of indemnity lands the Supreme Court say: "It may be a long time after the line of road is located before it is ascertained how many sections or parts of sections within the primary limits have been lost by sale or pre-emption."

St. Paul, etc., R. Co. vs. Winona & St. Peter R. Co., 112 U. S., p. 720 at 732.

The case of Northern Pacific Railroad Co. vs. Rooney, 30 L. D., p. 403, decided January 10th, 1901, and the decision in relation to the claim of Charles R. Johnson, made by the Secretary of the Interior, May 4th, 1901, 30 L. D., 602, show that the time has not yet passed in which the work of ascertaining how many sections or parts of sections within the primary limits of the Northern Pacific Railroad grant have been lost by sale, or pre-emption, or reservation or other disposition by the government.

The work of determining these facts is still going on.

10th. The Secretary of the Interior, in administering the grant, requires that selections of indemnity lands shall be made under the regulations provided for making selections until a deficiency has been ascertained and established by the Secretary of the Interior, although the quantity of lands may be in fact deficient.

Southern Pacific R. Co. vs. McKinley, 22 L. D., 493.
Southern Pacific R. Co., 18 L. D., pp. 314 and 315.
Northern Pacific R. Co. vs. Davidson, 16 L. D., 457, 458.
Northern Pacific R. Co., 25 L. D., pp. 511, 513 and 514.
Northern Pacific R. Co. vs. Streib, 26 L. D., 589 at 591.
Northern Pacific R. Co. vs. Pettit, 14 L. D., p. 591.
Southern Pacific R. Co. vs. McWharter, 14 L. D., 610.

11th. There has been no determination by the Secretary of the Interior that the grant is deficient.

Rec. pp. 766 at 768, 769.

Hewitt vs. Schultz, 180 U. S., 139 at 157, 158.
Northern Pacific R. R. Co., 25 L. D., 511, 514.
Northern Pacific R. Co. vs. Streib, 26 L. D., 589, 591.
Grunewald vs. Northren Pacific R. R. Co., 24 L. D., 195, 199.

Until there has been *an adjustment of the grant within the place limits,* the extent to which the indemnity lands may be required to supply the deficit can not properly or legally be determined. This is distinctly ruled in Oregon & Cal. R. Co. vs. United States, 189 U. S., 103.

12th. The plaintiffs rely upon the letter of June 7th, 1900, from the Commissioner of the General Land Office to the Secretary of the Interior. (Exhibit 36, p. 435.)

This letter is a report or statement made in pursuance of the circular of November 22, 1887, made by the Secretary of the Interior for the carrying out of the provisions of the Act of Congress of March 3rd, 1887, which directs an adjustment by the Secretary of the Interior of all the railroad land grants, and provides for proceedings for the recovery of lands conveyed in excess of the grants. The circular is found in 6 L. D., p. 276. (The Act of Congress is 24th U. S., p. 556.)

This report is not in any sense an adjustment of the grant in the State of Minnesota. It is only a report of the amount or quantity of lands covered by the grant *in Minnesota,* which report is necessary to be had, with a like report in respect to the lands covered by the grant, in every State into which the grant extends. The Act of Congress under which the circular is issued and this report is made provides for the adjustment of the grant *as an entire grant.*

Atchison, Topeka & Santa Fe R. Co., 21 L. D. 49 at 50.

It can only be known whether there is a deficiency in the grant as a whole, or whether there is a deficiency in any State, *by an adjustment of the entire of the grant.*

The deficiency in the place limits occurring both before and after July 2nd, 1864, down to the time of the definite location of the road, in the State of Minnesota, may be supplied by the lands within the first indemnity limits along the whole line of the road, and lands cannot be selected in the second indemnity limits until the lands along the entire line of the road within the first indemnity limits have been exhausted.

It follows, therefore, that it cannot be determined that there is any deficiency in the State of Minnesota until the adjustment is made which includes the first indemnity limits of the entire grant.

This letter or report does not purport to be anything else than a statement in reference to the lands in Minnesota, and it is such a report as is necessary to be made use of, *with a statement of like character, of the lands in each of the other States in which the grant extends*, in order to adjust the grant, or to determine whether there is a deficiency in the grant.

The quantity of lands in the second indemnity limits is not stated in this letter or report. It appears by the letter or report that it was not intended to determine the quantity of lands within the second indemnity limits.

As selections of indemnity lands are to be made within those limits, and as the quantity within those limits exceeds the amount which, under the grant, may be selected within them, the selection must be made as in other cases, and be approved by the Secretary of the Interior. In other words, there being more lands in those limits than are required for selection for the losses occurring after July 2, 1864, selections must be made of such lands as may be taken by the company for such losses, and as in other cases the lands selected must be nearest to the lands lost for which selections were made; and every consideration which requires the approval of the Secretary of the Interior in the case of any selections, applies to the selections which shall be made within the second indemnity limits.

13th. St. Paul & Pacific R. Co. vs. Northern Pacific R. Co. 139 U. S., p. 1.

In this case a controversy existed as to the rights of the parties to the suit (the railroad companies) to certain lands within the indemnity limits of the Northern Pacific R. Co. Objection was made that a selection of the lands in dispute had not been made by the Secretary of the Interior. The answer to that objection made by the Court was that it was "sufficient to observe that all the lands within the indemnity limits only made up for a part of the deficiencies; there was, therefore, no occasion for the exercise of the *judgment* of the Secretary in selecting them." (Page 19.)

The statement of the Court of the fact that all the lands within the indemnity limits only made up for a part of the deficiencies was made upon an admission of the parties in that suit. This fact, that it was based upon the admission of the parties in that suit, appears in the decisions of the land department below referred to.

Such admission is not evidence of the fact in any other case.

The decision upon that point has not been recognized except as controlling the controversy in that case.

It has been rejected as authority in respect to the fact of there being a deficiency.

> Grunewald vs. Northern Pac. R. Co., 24 L. D., 195 at 198-199.
> Southern Pacific R. Co., 18 L. D., 314, 315, 316.
> Southern Pacific R. Co. vs. McWharter, 14 L. D., 610 at 612.
> Northern Pacific R. Co. vs. Pettit, 14 L. D., 591, 592.
> United States vs. Missouri, etc., R. Co., 141 U. S., 358 at 376.
> United States vs. Colton Marble & Lime Co., 146 U. S., 615 at 616.

XII.

The attempt to show deficiency in the grant by the testimony of Earl N. Marvin.

1st. The question whether there is such a deficit in the grant that all the lands within the indemnity limits, or what quantity of such lands are required to supply the deficit *can only be determined by an adjustment of the grant by the Secretary of the Interior.* It can not be determined upon evidence taken in this case as is attempted on the part of the complainants.

In Oregon, &c., Railroad Co. vs. United States, 189 U. S., 103, at 115, lands within the indemnity limits of the grant were settled upon by homestead settlers after the location of the definite line of the railroad had been fixed, and before a selection of the lands was made by the railroad company. To defeat the claim of the homestead settlers the railroad company *gave evidence, as is done by the complainants in the present case, to show that all the lands in the indemnity limits were required to supply the deficit in the place limits,* and that for that reason no selection of the lands by the railroad company was necessary. Upon that question the Court say (p. 115): "It is also said that all the lands within the indemnity limits were required to supply the deficit in place limits arising from the disposition prior to definite location by sale or otherwise of lands within the granted limits. But the extent to which lieu lands could be required to supply such deficit in place lands could not be properly or legally determined until there was an adjustment of the grant of lands in respect of place limits. In any event, no such adjustment having taken place prior to the date of the settler's *bona fide* occupancy, his rights, based upon such occupancy, would not be affected by the fact, subsequently appearing, in whatever way, that all the odd numbered sections within the indemnity limits were needed to supply deficiencies in place limits."

2nd. The endeavor to show a deficiency by the testimony of witness Marvin is an attempt to take the administration of the grant out of the hands of the Secretary of the Interior. It is an attempt to determine, independent of the action of the Secretary of the Interior, the vital questions which are necessary to be determined in order for the proper administration of the grant. This action might as well have been taken immediately on the definite location of the route of the road as to undertake to do it now.

It would have been just as competent then, as now, to determine these facts without referring to the actions or determinations of the Secretary of the Interior.

3rd. There is no evidence given in the case of the actual length of the road as constructed; without a determination of which length as (shown above) it cannot be told whether there is or is not a deficiency in the grant.

4th. The testimony of Marvin is confined to showing these points, viz.: The quantity of land *in Minnesota* in the odd numbered sections within the place limits, and the quantity of those lands which had been disposed of at the date of the definite location of the road. (R. pp. 133, 136, 137, 138, 144.)

The total area of lands in Minnesota in the first indemnity limits. (R. pp. 133, 134, 137.)

The total area of the lands in the first indemnity limits in Minnesota disposed of at the date of the definite location of the road. (R. pp. 134, 137, 144, 145.

The total area in the place limits in Minnesota disposed of subsequent to July 2, 1864, and prior to the definite location of the road. (R. pp. 137, 138.)

The quantity of lands in the first indemnity limits in Minnesota disposed of prior to July 2nd, 1864. (R. pp. 166, 167.)

The quantity of lands in first indemnity limits in Minnesota disposed of between July 2nd, 1864, and the date of definite location. (R. pp. 167, 168.)

He made no examination in respect to the lands or quantity of them subject to selection within the second indemnity limits. (R. p. 157.)

5th. These findings or determinations of the witness, if they are competent evidence at all, do not tend to show that there is any deficiency in the grant.

They all relate exclusively to the lands in the primary place limits, or the first indemnity limits *within the State of Minnesota.*

They do not tend to show that all the losses within the place limits in the State of Minnesota could not be supplied from the lands subject to selection within the first indemnity limits of the grant along the whole line of the road.

They do not show anything relative to the quantity of lands within the second indemnity limits.

6th. The testimony of Mr. Marvin is incompetent.

There is nothing to show that the maps and plats in the government office, to which he refers, correctly show the losses in the primary limits, or correctly show the lands subject to selection within the first indemnity limits.

There is nothing to show that the boundaries defining the primary limits of the grant, or the boundaries of the first indemnity limits of the grant, have been determined by the Secretary of the Interior, or that they are, as determined by him, shown upon those maps or plats.

If these maps and plats would correctly show those facts, then proof should be made by certified or sworn copies of the maps and plats.

The testimony of Mr. Marvin is not a statement of what the maps and plats are, or of what they show, in fact, but his testimony is a statement of *his conclusions drawn by him* from an examination of the maps and plats in connection with maps and plats found and used in the office of the Northern Pacific Railroad Company.

See R. pp. 137, 138, 139, 140, 141, 154, 155.

7th. There is no statement in the bill of complaint that *there is a deficiency in the second indemnity limits*, or that there are not more lands subject to selection in those limits than were lost to the grant in Minnesota subsequent to July 2, 1864.

No such claim is made in the case either upon the pleadings or the evidence.

8th. It was not possible nor competent for the witness Marvin to show a deficiency in the grant by any computation to be made by himself.

There must be an adjustment of the grant by the land department, basing the adjustment upon the records as a finality, before it would be competent for him to testify from what the record showed.

Section 3 of the grant provides that: "If said route (of the Northern Pacific Railroad) shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this Act."

The witness could not investigate nor determine that question. He did not pretend to do so. He could not speak from the records upon the subject until the final determination had been made by the land department, and no such determination had been made. The witness speaks only from the records as he found them (R. pp. 133, 134,) and the records had not been made upon that subject.

XIV.

The complainant's contention that under the resolution of May 31st, 1870, (16 U. S. Stat., 378, 379,) the Northern Pacific Railroad Company was entitled to select lands in the second indemnity limits, to the extent of and in lieu of lands in the first indemnity limits, which had been disposed of by the government after July 2nd, 1864, and prior to the definite location of the line of the road.

The point does not seem to be material in the determination of this case, but it is submitted that the contention of the complainant cannot be sustained.

The provisions of the resolution are to be construed in connection with the Act of July 2nd, 1864, making the grant to the company.

By section 3 of that Act (13 U. S. Stat., p. 367,) it was provided: "That there be and hereby is granted to the Northern Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores over the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof, the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from preemption, or other claims or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, *any of said sections, or parts of sections,* shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections."

The Act contemplated that there would have been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of, a portion of the odd numbered sections within the primary limits of the grant, at the time when the line of the road should be definitely fixed—and because of that fact the provision was made that lands might be selected within the additional limits of ten miles to supply or make up for the land which had been so granted, or otherwise disposed of by the government, it was to make up for the loss to the railroad company of the "granted lands" within the place limits.

At the date of the adoption of the resolution of May 31st, 1870, the railroad company had not definitely fixed the line of its road although nearly six years had passed since the date of the grant.

It was contemplated that during that time sections, or parts of sections, had been granted, sold,reserved, occupied by homestead settlers or pre-empted, or otherwise disposed of, some portions of the lands which would be located within the limits of the granted lands as those limits would be determined by the definite location of the road, when that location should be made.

To provide for such change having occurred in the *granted lands, the resolution was adopted.*

The resolution provides: "That the Northern Pacific Railroad Company be, and hereby is, authorized to issue its bond to aid in the construction and equipment of its road. * * * And also to locate and construct, under the provisions and with the privileges, grants and duties provided for in the Act of incorporation, its main road to some point on Puget Sound, via the valley of the Columbia River, with the right to locate and construct its branch from some convenient point on its main trunk line across the Cascade Mountains to Puget Sound: and in the event of there not being , in any State or territory in which said main line or branch may be located, at the time of the final location thereof, the amount of lands per mile granted by Congress to said company, within the limits prescribed by its charter, then said company shall be entitled, under the direction of the Secretary of the Interior, to receive so many sections of land belonging to the United States, and designated by odd numbers, in such State or territory, within ten miles on each side of said road, beyond the limits prescribed in said charter, as will make up such deficiency, on said main line or branch, except mineral and other lands as excepted in the charter of said company of 1864, *to the amount of the lands that have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of subsequent to the passage of the Act of July two, eighteen hundred and sixty-four."*

The resolution first confirms to the railroad company *the same privilege and grant* which had been granted to it by the Act of July 2nd, 1864, that is, it re-affirmed the same grant of lands within the same primary limits, with the same privilege of selection of lands within the additional indemnity limits, to supply the place of lands which had been granted, sold, re served, occupied by homestead settlers, pre-empted or otherwise disposed of within the granted limits, and it provides that if there should not be *the quantity of lands granted* within the limits granted by its charter, then, for the amount of lands that have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of subsequent to the passage of the Act of July 2nd, 1864, lands may be selected within additional limits of ten miles. That is to say, the original indemnity limits have been extended ten miles to make up for the granted lands which have been disposed of or taken out of the grant subsequent to July 2nd, 1864.

The resolution of May 31st, 1870, is intended simply as an extension to the width of ten additional miles *of the limits within which selections might be made*, but limiting the right of selection within those additional limits to the making up of the quantity of lands which should be disposed of within the primary limits by the government subsequent to the date of the grant, July 2, 1864, and prior to the fixing of the definite line of the road.

That is the construction which was given to the resolution of May 31, 1870, by Secretary Vilas and by Attorney General Garland, in 1888 and 1889. (8th L. D. pp. 13 and 14.)

An examination of the decisions of the land department fails to disclose that any other construction of this resolution has at any time been claimed on the part of the Northern Pacific Railroad Company before the land department. It is submitted that the language of the resolution is to be understood in this sense,—that, in the event of there not being at the time of the final location of the line of the road, the amount of lands per mile granted by Congress to said company, within the limits of the granted lands prescribed by its charter, then said company shall be entitled, under the directions of the Secretary of the Interior, to receive so many sections of land belonging to the United States, and designated by odd numbers, in such State or territory within ten miles on each side of said road beyond the limits allowed for selections prescribed in said charter, as will make up such deficiency.

It is the deficiency in the granted lands alone which is to be made up. It is not a deficiency either in whole or in part, of the lands in the indemnity limits which is authorized to be supplied by the resolution. The Supreme Court and the land department have defined the lands granted within the primary limits "granted lands," and the lands which the railroad company is authorized to select to make up the deficiency in the granted lands are designated as "indemnity lands," and it is the deficiency in the granted lands within the granting limits which the resolution refers to and which is to be supplied, and not any deficiency in the indemnity lands.

Southern Pac. R. Co. vs. Bell, 183 U. S., 675.
Barney vs. Winona, &c., R. Co., 117 U. S., p. 228 at 232.
Wisconsin R. Co. vs. Price Co., 133 U. S., 496 at 513-514.
Northern Pac. R. Co. vs. Miller, 7 L. D., 100 at 120, 121.
Grunewald vs. Northern Pac. R. Co., 24 L. D., 195 at 199.

XV.

The lands described in Exhibit A of the bill of complaint, which are within the second indemnity limits.

Considering these lands separately, the evidence fails to show any title in the complainants to them.

1st. No title can be acquired by the railroad company to lands within the second indemnity limits until it is shown that the lands in the first indemnity limits throughout the entire length of the road subject to selection have been exhausted.

While the company is permitted to file selections of lands in the second indemnity limits, no action can be taken upon such selections and no title passes to them until it is shown that the lands in the first indemnity limits are exhausted.

Northern Pacific R. Co. vs. Halvorson, 10 L. D., 15 at pp. 16 and 17.
Northern Pacific R. Co. vs. Bass, 13 L. D., 201 at 202.
Northern Pacific R. Co. vs. Larson, 19 L. D., 233 at 236.
Northern Pacific R. Co. vs. Drew, 23 L. D., 380 at 381.
Grunewald vs. Northern Pac. R. Co., 24 L. D., 195 at 199.

2nd. For supplying losses within the primary limits of any State, all lands subject to selection within the first indemnity limits in that State are to be exhausted, and then selections are to be made from the lands within the first indemnity limits of the other States, in making the selections the rule being observed of taking the lands which are subject to selection nearest to the lost lands.

In this manner the entire of the lands subject to selection within the first indemnity limits along the entire route of the road are to be exhausted before any title can be acquired to any lands in the second indemnity limits upon any part of the route.

When in this manner the entire of the lands within the first indemnity limits upon the whole line of the road shall have been exhausted, and there shall appear to be a deficiency in the State of Minnesota, to the extent that such deficiency may exist of lands lost subsequent to July 2nd, 1864, and prior to the definite location of the road, resort may be had to selections within the second indemnity limits of that State. See following cases before cited.

Northern Pacific R. Co., 8 L. D., p. 13.
Northern Pacific R. Co., 17 L. D., 404 at 406.
Northern Pacific R. Co., 20 L. D., 187 at 189, 190.
Northern Pacific R. Co. vs. Sheperdson, 24 L. D., 417, 418.
Hagen vs. Northern Pacific R. Co., 26 L. D., 312, 316, 317.
Northern Pacific R. Co., 21 L. D., 412 at 422, 423.

3rd. The fact that the entire of the lands subject to selection within the first indemnity limits have been exhausted, like the determination whether there is a deficiency in the grant, is to be determined by the Secretary of the Interior.

This has not been determined by him.

It has not been determined by any evidence in the case; the evidence of Mr. Marvin does not go to that question at all. Nor does the letter of June 7, 1900, of the Commissioner of the Land Office.

It follows that no title has been acquired to those lands.

4th. The selection of these lands situated in the second indemnity limits can be made only to supply losses in the primary limits occurring subsequent to July 2nd, 1864.

16 U. S. Stat., 378, 379.

5th. *There is no evidence in the case that these selections are of lands which were subject to selections situated nearest to the lands lost for which the selections were made.*

It is not averred in the bill of complaint that they are such lands.

For this reason also the selections are without force.

XVI.

The lands in controversy which were selected in the second indemnity limits based upon lands lost in the place limits which were withdrawn for the benefit of the Lake Superior & Mississippi Railroad, under the grant for that road of May 5th, 1864.

13 U. S. Stat., p. 64.

On May 26th, 1864, a map of the general or probable route of the Lake Superior & Mississippi Railroad having been filed in the office of the Commissioner of the General Land Office, an order of the Secretary of the Interior was made withdrawing the lands for the width of about twenty miles along said route, for the benefit of said grant.

On December 25th, 1866, the route of the road was definitely located. After this definite location, viz.: On November 2nd, 1866, the Secretary of the Interior continued the withdrawal of May 26th, 1864, in so far as the lands embraced within the withdrawal fell within the place limits, or within the indemnity limits, fixed by the location of the route. The withdrawal thus made was never revoked.

Exhibit 70, R. p. 573.
Exhibit 71, R. p. 575.
Exhibit 76, R. p. 599.
Exhibit 77, R. p. 600.
Northern Pacific R. R. Co. vs. Rooney, 30 L. D., 403.

It thus appears that both at the date of the grant to the Northern Pacific Railroad viz.: July 2nd, 1864, and at the date of the definite location of the route of the road, July 6, 1882, the withdrawal was in force, and the lands embraced within the withdrawal were excepted from the grant to the Northern Pacific Railroad Company, and being thus excepted from the grant do not constitute a basis for selection of lands within the second indemnity limits.

This has been held repeatedly by the Secretary of the Interior.

Northern Pacific R. R. Co. vs. Rooney, 30 L. D., 403.
Northern Pacific R. R. Co. vs. Rooney, 29 L. D., 242.
Johnson vs. Northern Pacific Ry. Co., 30 L. D., 602.

The point is that the withdrawal of the lands made in favor of the Lake Superior & Mississippi Railroad under the earlier grant of May 5th, 1864, prior to the time of the grant to the Northern Pacific Railroad Company, and prior to the definite location of its route, excepted the lands within the withdrawal from the grant to the latter company. That such is the effect of the withdrawal is decided by the Supreme Court.

Northern Pacific R. R. Co. vs. Musser-Sauntry Co., 168 U. S., 604.
Wisconsin Cent. R. R. Co. vs. Forsythe, 159 U. S., 46.
Spencer vs. McDougal, 159 U. S., 62.
Wolcott vs. Des Moines Co., 5 Wall., 681, 688.
Wolsey vs. Chapman, 101 U. S., 755 at 768 to 770.
Hamblin vs. Western Land Co., 147 U. S., 531 at 536.
St. Paul & Pacific Railroad vs. Northern Pacific R. R., 139 U. S., 1 at 17, 18.
Kansas Pacific R. R. Co. vs. Dunmeyer, 113 U. S., 629 at 640, 641.
Bardon vs. Northern Pacific R. R. Co., 145 U. S., 535 at 545.

United States vs. Missouri, &c., R. R. Co., 141 U. S., 358 at 369.
Northern Pacific R. R. Co. vs. Miller, 7 L. D., 100 at 112.

In Northern Pacific Railroad Co. vs. Musser-Sauntry Co., 168 U. S., 604, there were these facts: June 3rd, 1856, a grant was made to Wisconsin, to aid in the construction of a railroad, granting six sections in width on each side of the line of the road, and fifteen miles indemnity limits. The line of the road was definitely fixed September 20th, 1858. On May 5th, 1864, Congress enlarged the grant to ten sections in width on each side of the line of the road and to twenty miles indemnity limits. The Chicago, &c., Railroad Company became the beneficiary of the grant. The lands in question in the case were within the indemnity limits of that grant being more than fifteen miles and less than twenty miles from the line of the road. In March, 1866, the lands were withdrawn from sale by the Secretary of the Interior for the benefit of that grant, which withdrawal remained until 1889. In 1883 the Chicago, &c., Railroad Company selected the lands for lands lost in place. On July 30th, 1870, the Northern Pacific Railroad Company filed a map of general route of its road, and on August 13th, 1870, a withdrawal of the lands within twenty miles of its route was ordered to be made of its grant. On July 6th, 1882, the Northern Pacific Railroad Company definitely fixed the line of its road opposite these lands. These lands are within the limits of the withdrawal made in favor of the Northern Pacific Railroad Company, and, also, within the place limits of the grant to that company, as those limits were fixed according to the map of definite location.

The Northern Pacific Railroad Company filed its bill to quiet title.

It will be seen that these lands were within the indemnity limits of the Chicago, &c., Railroad Company's grant and were within the withdrawal made in favor of that grant, which withdrawal was made in March, 1866 after the grant to the Northern Pacific Railroad Company of July 2nd, 1864, but before the line of definite location of said company's road was fixed.

The distinct question in the case was whether a withdrawal from sale of lands in the indemnity limits of the Chicago, &c., Railroad grant excepted the lands from the grant to the Northern Pacific Railroad Company, which fell within the place limits of its grant.

The Court held that the grant to the Northern Pacific Railroad Company was only of lands to which the United States had "full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption, or other claims or rights, *at the time the line of said road is definitely fixed;*" that the land having been withdrawn under the grant of May 5, 1864, at the time the line of the Northern Pacific road was definitely located, it was excepted from its grant as land which had been reserved within the terms of the grant to the Northern Pacific Railroad Company.

Mr. Justice Brewer, delivering the opinion of the Court, says (p. 607):

"But a single question is presented in this case, and that is whether the withdrawal from sale by the land department, in March, 1866, of lands within the indemnity limits of the grant of 1856 and 1864 exempted such lands from the operation of the grant to the plaintiff. It will be perceived that the grant in aid of the defendant railway company was prior in date to that to the plaintiff and that before the time of the filing of plaintiff's maps of general route and definite location the lands were withdrawn for the benefit of the defendant. The grant to the plaintiff was only of lands to which the United States had 'full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption, or other claims or rights, at the time the line of said road is definitely fixed.'"

"The withdrawal by the Secretary in aid of the grant to the State of Wisconsin was valid, and operated to withdraw the odd numbered sections within its limits from disposal by the land officers of the government under the general land laws. The act of the Secretary was in effect a reservation."

In Wisconsin Central Railroad Company vs. Forsythe, 159 U. S., 46, there were these facts:

June 3rd, 1856, a grant was made to Wisconsin, to aid in the construction of a specified line of railroad. June 12th, 1866, the land department made a withdrawal of lands to satisfy the grant, October 8th, 1856, Wisconsin accepted the grant, and on October 11th, 1856, conferred the grant upon the railroad company.

Nothing was done for the construction of the road until after the passage of a further Act of Congress of May 5th, 1864, by which there was granted to Wisconsin, to aid in the construction of a designated line of railroad, every alternate section of public lands designated by odd numbers, for ten sections in width on each side of said road, and providing that in case "it shall appear that the United States have, when the line or route of said road is definitely fixed, sold, reserved, or otherwise disposed of, any sections, or parts thereof, granted as aforesaid, or that the right of pre-emption or homestead has attached to the same, then it shall be lawful for any agent or agents to be appointed by the Governor of said State, to select, subject to the approval of the Secretary of the Interior, from the public lands of the United States nearest to the tier of sections above specified, as much land in alternate sections, or parts of sections, as shall be equal to such land as the United States have sold or otherwise appropriated, or to which the right of homestead or pre-emption has attached, as aforesaid."

The benefit of this land grant of 1864 passed to the plaintiff which claimed the land in dispute.

The land department rejected the claim on the ground that the land having been withdrawn for the benefit of the grant of 1856, it was excepted from the grant of 1864.

Mr. Justice Brewer, delivering the opinion of the Court, upon this point says (pp. 54, 55):

"The title of the plaintiff, as we have seen, can only be defeated by reason of the land not being within the scope of the grant made by the third section of the Act of 1864, and it is only excluded therefrom by the grant of 1856, and the reservation made in pursuance thereof. The reliance of defendants is on the long established rule, often affirmed by this Court and recognized in section six of the Act of 1864, to the effect that a grant by Congress does not operate upon lands theretofore reserved for any purpose whatsoever. There can be no doubt as to this rule, or as to the fact that lands withdrawn from sale by the land department are considered as reserved within its terms."

But the Court further held that it was the intention of the Act of Congress of 1864 to aid in the construction of the same line of railroad to aid which the grant of June 3rd, 1856, was made, and not a different line of road, and that being the case as the title to the land which was withdrawn under the grant of 1856 *was still in the United States*, it was within the power of Congress to include them in the second grant to aid in the same public improvement, and that it was the intent of the Act of 1864 so to convey them.

The opinion says (p. 55) as follows: "The alternate sections within the six and fifteen-mile limits of the Bayfield road were not granted by the Act of 1856. They were simply withdrawn from pre-emption and sale by the action of the land department in order that the beneficiary of the grant might, in case the full amount of lands granted was not found within the place limits, select therefrom enough to supply the deficiency. We do not mean that they were not reserved lands; on the contrary, as stated above, they were. Such is the uniform ruling of this Court in interpreting like action on the part of the land departmnet. Nevertheless, not being granted lands, they were still within the disposing power of Congress. There would be no question of the title of one to whom Congress had in terms granted them. 'Until selection was made the title remained in the government, subject to its disposal at its pleasure.' "

In Spencer vs. McDougal, 159 U. S., 62, the same question arose as to lands within the same grants, relating to lands in the place limits. The point was made that the withdrawal was of too much land, to-wit, all the lands in the district. The Court refers to the case of Wolcott vs. Des Moines Co., 5 Wall., 681, where the withdrawal was of lands the whole length of Des Moines River. It was a disputed question whether the grant terminated at the mouth of the Raccoon Fork, or extended the whole length of the river. After the withdrawal, in the subsequent litigation it was decided by the Supreme Court that the grant terminated at the mouth of the Raccoon River. The Court say (p. 65):

"But in the case cited it was held that the withdrawal by the land department of lands above the mouth of the Raccoon River was valid, and that a subsequent railroad grant, with the ordinary reservation clause in it, did not operate upon the lands so withdrawn. If a withdrawal of land beyond the terminus of a grant can be sustained, as it was in that case, equally so should be one made in anticipation of the locations of two lines of road, which locations were as yet undetermined, and might be such as to bring almost any portion of the lands withdrawn within the indemnity limits of the grant."

These decisions are direct to the point that under the grant to the Northern Pacific Railroad only such lands are granted by the Act as "the United States have full title, not reserved, sold, granted or otherwise appropriated, and are free from pre-emption or other claims or rights at the time the line of said road is definitely fixed," and that lands which are withdrawn from sale by the land department prior to the time when the line of the road is definitely fixed are excepted from the grant.

These cases further hold that title to the lands so withdrawn remains in the United States, and that the United States may grant or convey those lands, passing the title to them to any other company at any time prior to the time when the line of the Northern Pacific Railroad Company shall be definitely fixed.

In United States vs. Missouri, &c., R. Co., 141 U. S., 358 at 369 the construction of an Act of 1850 granting lands but reserving from the grant all lands reserved by an Act approved March 2, 1827, was involved. Speaking upon this subject, referring to subsequent railroad grants, the Court says (page 369): "*The policy indicated in this reservation was pursued in all subsequent Acts granting lands to aid in the construction of railroads;* the only difference between the reservation clause and the Act of 1850, and those inserted in subsequent Acts, being that the former was special in its application to a particular previous grant, *while each one of the latter class was general in its application to prior grants of every kind.* The manifest object of the general proviso was to exclude from the particular grant all lands previously reserved to the United States for any specific object whatever, and thereby enabling the government to accomplish those objects without confusion or conflict in the administration of the public domain, and thus keep faith with those who or for whose benefit prior grants were made."

In Northern Pacific R. Co. vs. Miller, 7 L. D., 100 at 112, Secretary Vilas, while holding that the withdrawal of lands beyond the place limits in the case of the Northern Pacific Railroad grant was contrary to the terms of the grant, stated upon the subject of the power of the withdrawals, as follows (p. 112): "The extent to which the Supreme Court has gone in its decisions, and the extent which the reason of the thing supports, appears to be that the president may, in execution or furtherance of a public purpose committed, generally or specially, by Congress to the executive to effectuate, when in his judgment such action is desirable to the accomplishment of that purpose and will not infringe any limiting provision of statute governing the particular case, withdraw or withhold by his order any portion of the public domain from the operation of the general laws for its disposition and devote it to such public use subject to review by Congress; and also that *in such a case*, the order of the department or land office will be conclusively presumed to have been directed by him, without proof of the fact and probably irrespective of it."

The case of the United States vs. Oregon & California Railroad Company, 176 U. S., 28, cited by complainants' ~~brief (p. [illegible])~~ is in accord with the above cases, and does not sustain the position for which it is cited.

Whether lands withdrawn from sale or pre-emption for the benefit of a railroad grant when based upon a mere location of general route operates to exempt the lands withdrawn from the operation of a subsequent congressional grant *depends upon the terms of the subsequent grant.*

If the subsequent grant is in terms like the grant to the Northern Pacific Railroad Company, *the withdrawal does exempt them*, because such grant, by its terms, does not include lands withdrawn or reserved.

If the subsequent grant is in terms like the grant to the Oregon & California Railroad Company involved in said case in 176 U. S., 28, *the withdrawal does not exempt such lands*, because the terms of the grant include and grant lands which have been withdrawn or reserved, *the title to which is in the United States at the date of the subsequent grant.*

In the case of the United States vs. Oregon & California Railroad Company, 176 U. S., 28, the facts are as follows:

After the grant to the Northern Pacific Railroad Company of July 2nd, 1864, viz.: on July 25th, 1866, Congress made a grant to aid in the construction of a railroad from Portland to the Central Pacific Railroad in California. The grant was conferred on the Oregon, &c., Railroad Co., which company, on the 29th of October, 1869, filed its map of definite location of its route opposite to the land in suit, and in February, 1870, the lands in dispute were withdrawn by order of the Secretary of the Interior under said grant of 1866.

On March 6th, 1865, President Perham, of the Northern Pacific Railroad Company, sent a communication, and map, to the Secretary of the Interior, asking that the lands be withdrawn in accordance with map for the benefit of the Northern Pacific Railroad Company. The Secretary declined to make the withdrawal. August 4th, 1870, the Northern Pacific Railroad Company filed two maps of the *general* route of its road, which were accepted, and withdrawals of the lands were made by the Secretary in accord with said maps, August 13th, 1870, and October 27th, 1870, which embraced the lands in controversy.

There never was any definite location of the Northern Pacific Railroad line opposite to the lands.

The question presented in the case was this:

The grant to the Northern Pacific Railroad Company made July 2nd, 1864, being a grant of only the lands to which the United States "have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption, or other claims or rights, at the time the line of said road is definitely fixed," and no definite line of the road having been fixed, did the grant made for the Oregon, &c., Railroad Company, on July 26th, 1866, (said company having fixed the definite line of its road on October 29th, 1869,) convey to that company the lands in dispute?

The Court held that the lands did pass to the Oregon, &c., Railroad Company by that subsequent grant.

The decision was upon the ground that the grant to the Northern Pacific Railroad Company entitled it to *only such lands as the United States had title to, and which were not reserved, sold, granted, or otherwise appropriated, and are free from pre-emption, or other claims or rights, at the time the line of said road should be definitely fixed;* that at any time before the line of such road should be definitely fixed the United States had authority to grant to other companies any of the land to which the United States retained the title; that at the time of the grant of July 26h, 1866 for the Oregon, &c., Railroad Company, there had been no reservation of the land in the Perham map of the general route of the Northern Pacific Railroad filed March 6th, 1865; but that even if there had been such a withdrawal, the title to the land withdrawn was in the United States, and it could grant the lands, because the Northern Pacific Railroad Company had not filed its line of definite location, and was entitled to only such lands as the United States had title to, not reserved or withdrawn at the date when the definite location of the road should be made; and that the grant to the Oregon, &c., Railroad Company conveyed such lands.

The granting clause of the Act of July 25th, 1866, grants "every alternate section of public land, not mineral designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side of said railroad line.)"

It will be observed that the granting clause of this Act differs from the granting clause of the Act of July 2nd, 1864, to the Northern Pacific Railroad Company.

This Act of July 25th, 1866, grants *every alternate section of public land, not mineral,* while the grant to the Northern

Pacific Railroad Company grants only public lands, not mineral, to which the United States has full title not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights, *at the time the line of said road is definitely fixed.*

The Court held that the terms of the Act of 1866, conveyed lands to which the United States had title, even though they were withdrawn or reserved.

The suit was brought by the United States under the claim that the lands had been forfeited by the Northern Pacific Railroad Company, and that they had not been granted to the Oregon, &c., Railroad Company.

The Court decided that, as the Northern Pacific Railroad Company had not filed any definite location of its road prior to the Act forfeiting its rights, it never had title to the land, and that the Act of 1866 granted the land to the Oregon, &c., Railroad Company.

So far as the lands within the withdrawal in question, made May 26th 1864, under the Act of May 5th, 1864, in favor of the Lake Superior & Mississippi Railroad fell within the primary place limits of the Northern Pacific Railroad Company, that railroad company would be entitled to make indemnity selections therefor as for the lands lost in place, *but its selections must be confined to the first indemnity limits of its grant.*

Selections can not be made from the second indemnity limits to supply such losses from the lands which are reserved prior to July 2nd, 1864, and are not lands lost subsequent to July 2nd, 1864, and prior to the definite location of the Northern Pacific Railroad.

An examination of the selection of the lands in Exhibit A of the bill of complaint, and of the basis assigned for such selection, shows that many of those lands are in the second indemnity limits of the Northern Pacific Railroad, and that the basis assigned for these selections are lands which are within said withdrawal of May 26th, 1864. Such selections, therefore, are without any basis to support them, and the Secretary of the Interior is without authority to approve them, since selections within the second indemnity limits can be made only to supply lands lost within the primary limits by their having been reserved or disposed of by the government *after* July 2nd, 1864, and before the definite location of the route of the road.

BENTON HANCHETT,
Of Counsel for Defendants Waldo A. Avery and others.

H. H. HOYT,
Solicitor for Defendants Waldo A. Avery and others.

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, A. D. 1903.

JOHN A. HUMBIRD, Et al,
Appellants,
vs.
WALDO A. AVERY, Et al,
Appellees.

Brief for Appellees Olean Land Company and Alger, Smith & Company.

All of the issues involved in this case have been so ably and exhaustively presented in the briefs of Messrs. Hanchett and Hoyt, who represent the defendant Avery and others, that it would be an act of supererogation on my part, an imposition upon the court, and would serve no useful purpose to attempt to retraverse the ground which has been so clearly and completely covered by them.

But as practically all of the lands claimed by the defendants Alger, Smith & Company and the Olean Land Company are located within the second indemnity belt, I desire to specially call the courts attention to this feature of the case.

We fully agree with counsel for the other defendants that the complainants have not made out a case which entitles them to recover the title to any lands referred to in the bill; but, conceding that they may recover the lands in the first indemnity belt, we contend that there is a complete absence of proof in this case of the facts which it is essential for the complainants to establish before it can be claimed that they are entitled to recover the lands located in the second indemnity belt.

The position of the defendants on this point is, that under the acts of Congress it is necessary for the Northern Pacific Railway to exhaust all of the lands in the first indemnity belt before it can resort to the second indemnity belt to make up for losses suffered in the primary grant. If this be so, then it follows that before the Northern Pacific can resort to the second indemnity belt, in Minnesota or elsewhere, it must first establish by competent proof that the losses in the primary grant exceed the total amount of lands in the first indemnity belt, for if they do not there would be no occasion to resort to the second indemnity belt at all. But, before it can be determined whether the lands in the first indemnity belt are sufficient in quantity to make up for the losses in the primary grant, it must first be established what the total losses in the primary grant are. But there is no proof in the case whatsoever of the losses in the primary grant outside of Minnesota; the complainants have confined themselves to proofs of loss in the latter state. The court cannot take judical notice of the amount of losses in the primary grant in the states of North Dakota, Montana, Idaho and Washington. So far as anything appears in the record, there never was any losses in the primary grant in the above named states.

It may be conceded, for the purpose of the argument, that the lands in the first indemnity belt, in Minnesota, were not sufficient in quantity to make up for the losses in the primary grant in Minnesota. It does not follow from this, however, that the Northern Pacific is entitled to resort to the second indemnity belt in Minnesota to make up for such losses; for, if we are right in our construction of the law, it must first exhaust *all* of the lands in the first indemnity belt, in the states west of Minnesota, before it can resort to the second indemnity belt in Minnesota for such losses. But as there is no evidence in the case of *any* losses in the primary grant, in the states west of Minnesota, the entire first indemnity belt, in those states, remains intact as a fund out of which to satisfy losses in the primary grant in Minesota; and if this must first be exhausted it follows that there is no proof in this case which shows that the complainants are entitled to resort to the second indemnity belt at all.

The determination of this question involves the construction of section three of the charter and also of the joint resolution of Congress approved May 31st, 1870.

That part of section three, so far as it is material to the question under consideration, is as follows:

"Sec. 3. And be it further enacted, That there be, and hereby is granted to the 'Northern Pacific Railroad Company', its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores, over the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any state, (and whenever on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption, or other claims or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the commissioner of the general land office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preempted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections."

The intention of Congress is here made perfectly manifeset. It is that in consideration of the construction of a line of railway from Lake Superior to Puget Sound the government would grant and convey to the Northern Pacific a *given amount* of lands. But as many of the lands within this grant would necessarily be taken, under the preemption and homestead laws, or otherwise disposed of, before the route of definite location could be fixed, and thus the grant reduced below the amount intended to be conveyed, the act itself provided for an indemnity belt out of which such losses should be satisfied.

It will be noted that the act treats this indemnity belt as an entirety, as a single fund. It was not in any way affected by state or territorial lines. If the indemnity lands provided for in Minnesota were not sufficient to make up for losses in the primary grant in that state, then the indemnity lands in Dakota and the states further west could be resorted to until the deficiency was completely satisfied. This first indemnity belt was a single reservoir to be drawn upon until all losses occurring in the primary grant should be made good.

If no provision for a second indemnity belt had ever been made, then, necessarily, the plan of procedure indicated above is the one that would have to be followed in order to provide for the losses arising in the primary grant.

The next question, then, to be considered is, whether the resolution, providing for the second indemnity belt, in any way repealed, modified or changed the plan of procedure, provided for in the charter, of satisfying losses in the primary grant.

This resolution, so far as it has any bearing upon the question under consideration, is as follows:

"And in the event of there not being in any State or Territory in which said main line or branch may be located, at the time of the final location thereof, the amount of lands per mile granted by Congress to said company, within the limits prescribed by its charter, then said company shall be entitled, under the directions of the Secretary of the Interior, to receive so many sections of land belonging to the United States, and designated by odd numbers, in such State or Territory, within ten miles on each side of said road, beyond the limits prescribed in said charter, as will make up such deficiency, on said main line or branch, except mineral and other lands as excepted in the charter of said company of eighteen hundred and sixty-four, to the amount of the lands that have been granted sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of subsequent to the passage of the act of July two, eighteen hundred and sixty-four."

We contend that this resolution did not in any way modify or change the plan of procedure, provided for in the charter, of satisfying losses in the primary grant. It is of the nature of an enlargement and addition to the original charter, but it is not of the nature of an amendment or modification of it.

The complainants seem to regard this second indemnity belt as a mere addition to the first indemnity belt, and that it can be resorted to for the satisfaction of losses in the primary grant, in like manner and under the same circumstances that the first indemnity belt can be resorted to. It was undoubtedly intended as additional security, but the security is of a different kind and character than that provided for in the first indemnity fund.

This is evident from the language of the charter and the resolution, which clearly indicates that the two indemnity belts are to be maintained as distinct and separate funds. By the terms of the charter, the first indemnity belt was a fund for the satisfaction of losses in the primary grant, regardless of where those losses occured; that is the first indemnity belt in Dakota could be resorted to satisfy losses in the primary grant in Minnesota, in case there was not a sufficient quantity of lands in the first indemnity belt in Minnesota to make up for such losses. But, by the terms of the joint resolution, under no circumstances can the second indemnity belt in one state be resorted to for the satisfaction of losses in the primary grant in another state. Again, under the provisions of the charter the first indemnity belt was a fund for the satisfaction of losses in the primary grant, regardless of the time as to when the losses occurred. But, by the terms of the joint resolution, the second indemnity belt is provided as a fund *only* for the satisfaction of such losses as occured "subsequent to the passage of the act of July two, eighteen hundred and sixty-four."

These provisions clearly show that it was the intention of Congress to keep these two funds separate and distinct, and that both could not be drawn upon indiscriminately to satisfy all classes of losses. But if it had been the intention of Congress simply to increase the fund in size: if it had been the intention merely to enlarge the range of choice of the railway in the selection of lands for the satisfaction of losses in the primary grant, in such case, the resolution would have provided that the lands in the second indemnity belt were subject to the satisfaction of losses under the same circumstances and conditions as the lands in the first indemnity belt.

By the terms of the original grant the government agreed to give the Northern Pacific Railroad a certain *quantity* of lands as a consideration for the construction of a line of railway from Lake Superior to Puget Sound, but there is nothing in the contract as to the *quality* or character of the lands granted. The railroad had to take the lands as they run, good, bad and indifferent alike in the primary grant. It was not the intention of Congress in providing for either the first or second indemnity belt to in any way enlarge the range of choice of selection of land. Both were provided for merely as a fund for the satisfaction of losses in the primary grant. If there had never been any losses in the primary grant, then the first indemnity belt could not have been resorted to at all. Likewise, if the lands in the first indemnity belt are sufficient in quantity to make up for losses in the primary grant, then the second indemnity belt cannot be resorted to.

This view is not only in harmony with common sense and reason, but the plain language of the statute compels this construction.

The joint resolution of May 31st, 1870, provides: "and *in the event* of there not being in any State or Territory in which said main line or branch may be located, at the time of the final location thereof, the amount of lands per mile granted by Congress to said company, *within, the limits prescribed by its charter, then* said company shall be entitled, under the directions of the Secretary of the Interior, to receive so many sections of land belonging to the United States, and designated by odd numbers, in such State or Territory within ten miles on each side of said road, beyond the limits prescribed in said charter, as will make up such deficiency, on said main line or branch."

The meaning of this language is plain. It is that, "in the event" there is not a sufficient quantity of lands, *"within the limits prescribed in the charter,"* to make good the amount of lands granted by Congress, then, but not otherwise, the second indemnity can be resorted to make up such deficiency.

As the first indemnity belt was "prescribed in the charter" as a fund to make good the losses occurring in the primary grant, it follows that the company cannot have recourse to the second indemnity belt, until the first indemnity belt has been completely exhausted.

Even if the first and second indemnity belt had been provided for in the same act, and if it was clear that they were to be treated as a single fund, out of which losses were to be satisfied, the company would still have to resort to the lands in the indemnity belt which were nearest to the lands lost before they could have recourse to the lands in the indemnity belt which were more remote.

This doctrine is recognized in the case of William H. Wood vs Burlington and Missouri River Railroad Company, 104 U. S. 330, wherein the court says:

> "Although there was no express limitation of the distance from the road in which the land was to be selected, it was necessarily implied that the selection should be made of alternate sections nearest to the road, of which the land had not previously been sold, reserved or otherwise disposed of. The company was not at liberty to pass beyond land open to its appropriation, and take lands further removed from its road. In all grants which are to be satisfied out of sections along a line of road, it is necessarily implied, in the absence of specific designation otherwise, that the land is to be taken from the nearest undisposed sections of the character mentioned. Such grants give no license to the grantor to roam over the whole public domain lying either side of the road, in search of land desired. The grants must be satisfied out of the first land found which meets the conditions named."

We are not aware that the courts have ever passed upon the question as to whether, under the Northern Pacific grant, the company could resort to the second indemnity belt before it appeared that the first indemnity belt had been completely exhausted, but this is the construction that has been uniformly placed upon the grant by the Land Department.

In Northern Pacific R. R. Co. vs. Drew, 23 L. D. at Page 381, Secretary Francis says:

"Within the second indemnity belt only certain losses will support a selection, namely, losses after the date of the passage of the act of July 2, 1864, and of land within the state in which the selection is made *which cannot be satisfied from lands within the first indemnity belt.*"

In Northern Pacific R. R. Co. vs. Bass, 13 L. D. 201, it was held: "The Northern Pacific Company must exhaust the lands in the first indemnity belt before it can obtain title to the lands in the second, but this does not prevent selections in the second belt, on proper bases, pending final adjustment of the grant within the primary limits and first indemnity belt."

And in Northern Pacific R. R. Co. vs. Larson, 19 L. D. 233, is was declared, that "An indemnity selection within the second indemnity belt is not premissible where the losses do not occur subsequent to the act of July 2, 1864, *and where it can be satisfied within the first indemnity belt.*"

If it be true, then, that lands in the second indemnity belt cannot be selected in satisfaction of losses in the place limits, until the lands in the first indemnity belt shall have first been exhausted, it follows that two things must be clearly shown before the right of the company to resort to the second indemnity belt can be established: First, the total amount of losses within the place limits of the original grant; Second, that the lands within the entire first indemnity belt are not sufficient in quantity to make up for losses occuring in the primary grant.

We contend that there is no such proof in this case. The only evidence in the case as to losses in the primary grant is the testimony of Mr. Marvin and the letter from the Commissioner of the General Land Office to the Secretary of the Interior, dated June 7th, 1900, (Exhibit 36, page 435 of record.)

Mr. Marvin is not a public official, but a private witness introduced by the complainants. Furthermore, his testimony is not merely a direct statement of facts disclosed from an examination of the public records contained in the Land Department, but is made up, in large part, of his own private opinions, conclusions and deductions dawn from such examination.

But the chief vice in his testimony, and where it falls short of accomplishing the purpose for which it was intended, is that it is confined to showing losses in the grant in Minnesota, and, as we have before pointed out, the total losses in the place limits of the entire grant must first be shown, and also the fact that the lands in the entire first indemnity belt are insufficient to satisfy such losses, before the company can resort to the second indemnity belt to make good such losses.

The letter of the Commissioner of the General Land Office, above referred to, is subject to the same objections. It is not a statement of facts as disclosed by the records, from an examination of which the court can determine whether his deductions are right or wrong, but it is a mere summary statement of his own conclusions as to what the records show as to the condition of the Northern Pacific grant. While it is true this investigation was made upon the request of the Secretary of the Interior, yet it was in the nature of a private and independent investigation, for it was not made in a judical proceeding, where the various interests directly affected were present and could object to its competency and sufficiency.

We do not believe that such a report as this could even bind or estop the government in a direct proceeding between the government and the company; much less could it finally settle and determine the property rights of private individuals, whose rights had been acquired in accordance with the provisions of law, and who were not parties to the proceeding and had no opportunity to be heard in the matter.

But, conceding the competency of this letter of the Commissioner of the General Land Office as evidence, it is entirely insufficient to make out a case for the complainants, and is subject to the same vice as the evidence of Mr. Marvin in this, that the investigation was confined to an examination of the facts as to the condition of the grant in the State of Minnesota.

This is manifest from a reading of the report itself, the first paragraph of which is as follows: "In conformity with the directions of the Department (6 L. D. 276), and the requirements of the act of March 3, 1887, (24 Sat., 556), an examination, with a view to its adjustment, has been made of the grant for the Northern Pacific Railway Company *in the State of Minnesota* under act of

July 2, 1864, (13 Stat., 365), and I herewith submit a full statement of the results of such examination."

Thus it appears, upon the face of the report, that the investigation was limited to an examination of the facts as to the condition of the grant, *in the State of Minnesota*, and, as before noted, the law required the first indemnity belt to be completely exhausted before the company was entitled to resort to the second indemnity belt: and the only way in which the fact could be established that the first indemnity belt had been completely exhausted would be, by proof of the fact that the losses in the entire primary grant were greater in quantity than the amount of the lands in the first indemnity belt which was provided, in the first instance, for the satisfaction of such losses.

Furthermore, this court has held, in the case of Hewitt vs. Schultz, 180 U. S., 138, that the certificate or statement of the Commissioner of the General Land Office, as to the condition of the grant of the Northern Pacific Railway Company, is not competent evidence of such fact in a suit between private individuals and whose rights would be affected by such report if it were admitted in evidence.

On page 157 of said case, the court says:

"It is appropriate to refer to an other matter. It appears from the finding of facts that Mr. Lamoreux, when Commissioner of the General Land Office, issued a certificate, dated May 2, 1896, in which it was stated: 'I have caused examination to be made of the records of this office relative to the grant to the Northern Pacific Railway Company under acts of Congress approved July 2, 1864, and May 31, 1870, and certify that said records show the total area of lands excepted from and lost to said grant within its primary limits amounts to 10,624,746.27 acres, and that there are within the first indemnity limits not to exceed 7,065,523.49 acres which are, or will be when surveyed, available for selection to satisfy the losses above referred to, thus leaving a known deficiency of 3,559,222.78 acres in said grant which cannot be satisfied from the limits as now recognized by this office.'

"It does not appear from the finding of facts that this certificate was given in any proceeding between parties in the Land Department. On the contrary, the Commissioner of the General Land Office in a supplemental report for the year 1899 referred to the grant to the Northern Pacific Railroad Company, and staid: 'In view of the large quantities of unsurveyed lands within the grant, and of the uncertainty of their avaliability for use in the satisfaction of it: and of the litigation pending involving lands within the conflicting limits aforesaid and the true eastern terminus of the grant, and considering the proceeding now in progress under the act of July 1, 1898, and the right of selection for lands within the Mount Ranier forest reserve under the act of March 2, 1899, and the prospect of the creation of other forest reserves within the limits of the grant, I am of opinion that it cannot at this time be stated with any degree of certainty that there are or are not sufficient lands available to satisfy the Northern Pacific grant under the act of 1864'.

"Besides, In Northern Pacific Railroad Co., 25 L. D. 511, and in Northern Pacific Railroad Co. vs. Streib, 26 L. D. 589, it was found that there never had been any ascertained deficiency in the grant to the Northern Pacific Railroad Company. In the above case in 26 L. D. the Secretary of the Interior, referring to the certificate of Commissioner Lamoreux, said: 'Relative to the certificate of a deficiency in the grant to this company (the Northern Pacific) made by your predecessor, it is sufficient to say that this department has never given recognition to that certificate, nor has the company been relieved from the specification of losses in making indemnity selections on account of an ascertained deficiency in the grant.'

"So that if the question whether there has been deficiency in the grant of lands to the Northern Pacific Railroad Company was at all material in the present case, no effect can be given to the certificate of Commissioner Lamoreux set out in the findings of fact."

If no effect can be given to the certificate of Commissioner Lamoreux, then certainly no effect can be given to the report of the Commissioner of the General Land Office dated June 7, 1900, for, as between the two, the certificate of Commissioner Lamoreux is subject to fewer objections than the report of June 7, 1900; for the former did pretend to give the results of an examination into the question of losses in the entire original grant, whereas the latter confined itself to the losses occurring in the State of Minnesota.

For the foregoing reasons, therefore, we contend that the complainants have not shown that they are entitled to recover any of the lands involved in this suit which are located in the second indemnity belt.

LUTHER C. HARRIS,
Counsel for Alger, Smith & Company and Olean Land Company.

Supreme Court of the United States.

No. 89.

JOHN A. HUMBIRD and FREDERICK WEYERHAEUSER, Appellants,

vs.

WALDO A. AVERY, et al., Appellees.

Certified from the United States Circuit Court of Appeals for the Eighth Circuit.

BRIEF FOR APPELLEES,

1. On July 2, 1864, Congress passed an Act granting Lands to aid in the construction of a Railroad and Telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the Northern Route. Upon persons named in the act, certain powers were conferred, and by said act they were created and erected into a body, corporate and politic in deed and in law, by the name, style, and title of the Northern Pacific Railroad Company.

On May 31, 1870, by Joint Resolution the indemnity limits of this grant, were extended ten miles on each side of said road beyond the limits prescribed by the charter to make up deficiency in certain cases specified therein. The lands in controversy are within the indemnity limits of said grant, and within the extended indemnity limits of the Joint Resolution above referred to.

More than thirty-nine years have elapsed since the act of July 2, 1864, was passed, and we are now before this court resisting the contention of the complainants to 10,601 acres of lands, the title to which it is claimed is based on the grant to the Northern Pacific Railroad Company, above referred to.

The complainants having brought this action, must establish their rights to these lands. To this end, they have offered evidence tending to show, the definite location of the line of the Northern Pacific Railroad Company, the completion of said road co-terminus with these lands, the loss of lands within the place limits, the selection of the lands in controversy in lieu thereof; by reason of which it is claimed a vested right in these lands became fixed in the Northern Pacific Railroad Company, and that such vested right could not be effected by any subsequent action on the part of the Land Department.

Par. 12 of the Bill (Record pp. 11-12) is as follows:

> Your orators further allege that but for the vested rights of the Northern Pacific Railroad Company, and its grantees in the several tracts of land described in Exhibit "A", the said lands would, at the several dates of the respective alleged entries thereof, described in said Exhibit "A", have been unappropriated public lands of the United States, open to the several kinds of entries or location, made, or pretended to be made, with respect to them, severally, as shown in Exhibit "A", and that the several applications and proceedings with respect to the several entries, were in due form and regularly conducted, as required by law, and in the absence of the vested rights of the

said Northern Pacific Railroad Company, and its grantees in the said premises, would have been operative and effectual to invest the several entrymen of said lands with complete, equitable title thereto, each of such entries, having been finally receipted for, allowed and approved by the proper land officers of the United States; the only act remaining for the United States, or its officers, to perform with respect to such entries, being the issuance of the patent in cases where the patent has not already issued.

This allegation in the pleading, limits the issue between the parties to the question whether, under the evidence in this case the complainants' grantors had a vested right in these lands arising from the proceedings taken by the Northern Pacific Railroad Company. If at the time this action was brought no vested right existed, the complainants' whole case falls to the ground.

The lands in this contention are all within the indemnity limits of the Northern Pacific Railroad Company. It is admitted in the Bill that the selections pretended to have been made by said company were never approved by the Secretary of the Interior, it being avered in said Bill "that no action has ever been taken upon said lists, or upon the selection of said lands mentioned in Exhibit "A" aforesaid except as hereinbefore and hereinafter set forth." Par. 8, Rec. p. 8).

For the purpose of showing a vested right in these lands the complainants offer in evidence certain preliminary selection lists in which these lands are included. Exhibits 19, 20, 21, 22, 23, 24, and 25, found on pp. 325, 332, 346, 368, 379, 406 and 411 of the Record.

Upon these preliminary selections without the approval of the Secretary of the Interior, the complainants base their allegation of a vested right in these lands.

A vested estate in land is one that is not subject to any contingency, nor to conditions unperformed. No vested right to these lands could be acquired until all the prerequisites for the acquisition of the title had been complied with. The lands in controversy are claimed to have been selected by the Northern Pacific Railroad Company as indemnity for lands lost in the place limits. The title to lands of this character does not vest in a railroad company until the selections are approved by the Secretary of the Interior.

That this is a familiar proposition seems to be firmly established by the decisions of this court.

Clark vs. Herington, 186 U. S. (L. ed.) 1128-1130 and cases there cited.

No case can be found that would more appropriately illustrate the necessity of this legal principle than the one now under consideration. If the Northern Pacific Railroad Company acquired a vested right in lands within the indemnity limits of the road, by reason of these selections, the right to the lands selected would be fixed and determined. This vested right can not be put on or taken off like a garment. The Northern Pacific Railroad Company in 1883 selected all the vacant, unappropriated odd sections within the first and second indemnities, along its line of road, and when later, it was required to rearrange its lists, and select tract for tract, it was found that this company had selected, in Minnesota alone, 75,000 acres of land more than was necessary to indemnify it for the lands lost within its place limits; this excess the Company relinquished. (See Record pp. 771 to 819). If the company had a vested right, by reason of its selection, such vested right extended to all the lands selected by it. The Northern Pacific Railroad Company has, since its selections, claimed the right, and it has been allowed the privilege, to relinquish its claim to any lands selected at its pleasure. How can it be said to have vested rights in those lands remaining?

The complainants claim that by reason of the loss in the place limits, and the selection of these lands within the indemnity limits, with the showing made of a deficiency in the grant within the state of Minnesota, the railroad company had obtained a vested right in the lands in controversy, notwithstanding the want of approval by the Secretary of the Interior of the selections made. I contend that until the approval of the Secretary of the Interior, no right whatever is acquired to these lands by the railroad company. No law can be found authorizing these lists to be made by the railroad company, and filed with the Register and Receiver of the Local United States Land Office, and thereby segregate the land; and without some authority so to do, these lists would confer no greater rights upon a railroad company, than the filing of an unauthorized paper by any other corporation, or individual. In other words, the effective thing is not what the company suggests, but what the Secretary does. The duty of selecting is his duty. His action, and nothing else, fixes the beginning of the company's title to a particular tract of indemnity land.

I take the law on this subject to be that, when the line of a railroad is fixed by filing a map of definite location, such as the law requires, then all the odd sections within the granted limits are reserved from sale, but no other lands. All the lands outside of the place limits may be taken up at any, and all times by any qualified person. There is no restriction upon the public lands beyond the granted limits, and within these limits all that is reserved consists of the alternate sections. If it should subsequently be found that there were not sufficient odd sections on each side of the line of road within the place limits, to make up the quantity granted, then when that fact is discovered, the company can go into the indemnity limits, and select, with the approval of the Secretary, lieu lands in place of the lost; but until such selection is made, accompanied by the approval of the Secretary, the lands that the company might select are subject to sale under any of the land laws of the United States. No part of these lands are reserved for the company.

The President of the United States, cannot instruct the Secretary of the Interior, nor the Commissioner of the General Land Office, to reserve lands selected by the railroad company in its lists of selections, nor are these officers authorized to reserve in any manner a single section, whether the section be odd or even; they are all, without exception, subject to entry in the regular course of the administration of the land office. Such, I take it, is the law, as indicated in the decisions of this court.

Oregon & California R. R. Co. vs. United States, 189 U. S., 103.

2. The complainants to further maintain and prove their title, produced and offered in evidence what purported to be a certified copy of an amended decree for the sale of lands of the Northern Pacific Railroad Company, east of the Missouri River, made in the Circuit Court of the United States for the District of Minnesota, Third Division, in a case wherein the Farmer's Loan & Trust Company appeared to have been the complainant, and the Northern Pacific Railroad Company, and others, were the defendants. (Exhibit 39, p. 448 of Record). This decree was ancillary to a similar decree, eminating from the Circuit Court of the United States for the Eastern District of Wisconsin, where the cause of action was originally commenced. They also produced and offered in evidence, what purported to be a certified copy of the report of the Special Master of the sale of lands under the decree above mentioned, (Exhibit 40, p. 455 Record) and the confirmation of the sale. There was also produced and offered in evidence a deed from the Special Master to the Northern Pacific Railway Company conveying the lands in controversy, (Exhibit 41, p. 459, Exhibit 42, p. 468). There is no evidence in the record showing what was the subject matter of the contention betwen the parties in this action; the papers were entitled in a cause in which it

would appear that the Farmer's Loan & Trust Company, who was complainant, had brought an action against the Northern Pacific Railroad Company, and others, who were defendants; it further appeared that the action was an equitable one, but whether it was brought for the purpose of foreclosing a mortgage given by the Northern Pacific Railroad Company to the complainant in the case, or that some other matter was then before the court, is left to conjecture.

The matter now under consideration involves the title to lands claimed by the complainants under the above mentioned proceedings of the court. It was incumbent upon the complainants deriving their title under these proceedings to give in evidence the whole enrolled record, or at least, all those parts of the record that would have a bearing upon the question, whether the proceedings as a whole divested the title of the former owner.

Pratt v. Stewart, 10 Michigan, 260.

This court has decided in Thatcher v. Powell, 6 Wheaton, 221, that no individual, or public officer, can sell and convey a good title to the lands of another unless authorized so to do by express law. This is one of those self-evid[illegible] propositions to which the mind assents without hesitat[illegible]son invested with such power must pursue with pe[illegible]sion the course prescribed by law, or his acts are invalid. This principle has been repeatedly recognized in this court.

In Ranson v. Williams, 69 U. S., (L. ed.) 313, the court said:

> The plaintiff asserted a title, and it was for him to show everything necessary to maintain it. The rule on this subject is thus laid down by Chief Justice Marshall, "It is a general principle that the party that sets up a title must furnish evidence necessary to support it. If the validity of a deed depends upon an action in pais, the party claiming under that deed is as much bound to prove the performance of the act as he would be bound to prove any matter of record on which its validity might depend. It forms a part of his title; it is a link in the chain which is essential to its continuity, and which it is incumbent on him to preserve. These facts should be examined by him before he becomes a purchaser, and the evidence of them should be preserved as a necessary muniment of title.

If the enrolled record of the proceedings in the case of the Farmer's Loan & Trust Company vs. Northern Pacific Railroad Company et. al., or that part of the record which had a bearing on the question, whether the proceedings as a whole divested the title of the Northern Pacific Railroad Company to these lands, it must have shown that the lands in this controversy were not covered by any mortgage, to satify which, this sale was made. If it should appear from these proceedings that the sale was made for the purpose of satisfying a deficiency, arising from the sale of property belonging to the Northern Pacific Railroad Company under any mortgage not covering the lands in controversy, or for the payment of debts contracted by that company, the court would have no jurisdiction to order these lands sold to satisfy such claims for the reason that Sec. 10 of the Act of July 2, 1864, prohibited it. If this action was to be considered a bill to wind up the affairs of the corporation, known as the Northern Pacific Railroad Company, and distribute its assets, then the stockholders of the organization should have been made parties to said action. No proceedings of this kind could have been taken on a bill filed simply to foreclose a mortgage. There was no mortgage on these lands. Section 10 of the Act of July 2, 1864, provided that no mortgage should be given, or lien made in any way upon the property of the Northern Pacific Railroad Company without the consent of Congress, and the joint-resolution of May 31, 1870, only gave to this company a right to issue bonds to aid in the construction and equipment of its road, and to secure the same by mortgage. The record in the case shows that the road from Lake Superior, through the State of Minnesota, was completed in 1872 (Record, page 310). We claim, therefore, that the record in this case does not show that the court had any jurisdiction to order the sale of these lands.

By Section 10 of the Act of July 2, 1864, granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the northern route, the Northern Pacific Railroad Company was prohibited from ever giving any mortgage or construction bonds on said road, or mortgage or lien in any way except by the consent of the Congress of the United States.

The United States had the right to make these conditions as here expressed. There was no limit as to the time, the completion of the road would not destroy them, but they were of such a nature as to exist perpetually.

If Congress had never given its consent that a mortgage might be made by the Northern Pacific Railroad Company covering these lands, could any valid mortgage or lien have been given by the company? It seems to me that there could be no question that if such a mortgage or lien was given, it would be absolutely void.

The acceptance of the provisions of the grant of July 2, 1864, by the Northern Pacific Railroad Company, created a contract between the United States, and the company that could not be changed or modified without the consent of both parties.

On May 31, 1870, Congress gave a conditional assent to the modification of Section 10, in these words:

> That the Northern Pacific Railroad Company be, and hereby is, authorized to issue its bonds to aid in the construction and equipment of its road, and secure the same by mortgage on its property, and rights of property of all kinds and descriptions, real, personal and mixed, including its franchise as a corporation.

Congress gave to the Northern Pacific Railroad Company only the right to mortgage these lands to secure bonds issued to aid in the construction and equipment of its road; no general authority to mortgage was given. Consent that a lien might be placed on any of the property of the company other than by way of mortgage, was never given. The Northern Pacific Railroad Company had no right to place a lien on these lands. No court had a right to abrogate the provisions expressed in Section 10, by awarding a decree against the company for the satisfaction of a lien created, and thus indirectly do what the law forbids to be done in a direct manner.

If I am correct in this, was it within the power of any court to decree a sale of these lands, not covered with a mortgage, to satisfy the amount due on a lien held by parties other than the United States?

The court by its decree, dated May 25, 1899, (page 448) (record) directs that

> All of the lands for which letters patent have issued to said defendant, Northern Pacific Railroad Company, and the right to receive lands for which letters patent have not issued, but which have been selected by, and certified to said company, shall be sold in single sections or subdivisions.

Two classes of lands are mentioned: First, lands patented to the Northern Pacific Railroad Company. Second, lands selected by the company, and selections approved to it by the Secretary of the Interior.

In this controversy no lands thus designated are included. If the lands involved in this contention are designated in the decree at all, they come within the clause:

> "All lands for which patents have not issued, and which have not been selected by and certified to said company."

Lands thus designated are of the class of lands involved in this controversy. As to these lands the company had made only a preliminary selection, and filed the same in the local office. If the company had no rights, legal or equitable, in these lands, at the date of the sale, it is not clear that a vested right was conferred on the Northern Pacific Railway Company by the sale.

3. If this court should find that any title to these lands passed to the Northern Pacific Railway Company by reason of the proceedings above recited, we then claim that the Northern Pacific Railway Company was not authorized to purchase, hold or convey these lands.

The rights of the Northern Pacific Railway Company are based upon an Act of the State of Wisconsin, dated March 15, 1870, by which was incorporated the Superior & St. Croix Railroad Company. This Act was, in effect, the same as the one under consideration in the case of Case v. Kelly, 133 U. S., (L. ed.) 513, in which it was held that the railroad had no authority to deal in any lands, except only such as was necessary in the conduct of its business as a railroad. That decision would govern this case, provided the amendments to the articles of incorporation of the Superior & St. Croix Railroad Company, adopted by the Legislature of the State of Wisconsin April 15, 1895, were not deemed effective. The Act with the amendments are given in full; (see Appendex A) attached to this brief.

We claim that Section 8, as amended, under which the authority is conferred, is void, as contravening not only Sec. 18, of Article 4, of the Constitution of the State of Wisconsin, but of Sec. 31, Article4, of the same instrument.

Section 18, Art. 4, of the Constitution, is as follows:

> No private or local bill which may be passed by the Legislature shall embrace more than one subject, and that shall be expressed in the title.

The title of the Act was "to incorporate the Superior & St. Croix Railroad Company."

The title of the Act as amended April 15, 1895, is:

To amend Chapter 326 of the private and local laws of 1870, entitled "An Act to incorporate the Superior & St. Croix Railroad Company," and Chapter 328, of the private and local laws of 1871, entitled "An Act to amend Sec. 2, Chapter 326, of the private and local laws of 1870, approved March 15, 1870, entitled "An Act to incorporate the Superior & St. Croix Railroad Company."

The title was plain and simple, "To incorporate the Superior & St. Croix Railroad Company." Anything that was germane to this title was authorized under it. The Act, designated the line of the road, its powers and capacity; by Section 1 it was declared capable of acquiring by deed, lease or other conveyance, a fee simple or any less estate in lands, tenements or easements in the same, and of conveying any such estate or interest by deed, lease or other conveyance, or of holding such estate or interest, or any other estate necessary for the use of said railroad. Section 1 was not amended, but remains the same as in the original Act. By Sec. 8 in the original Act it was declared that

> The company hereby created shall be capable in law of taking and holding any land granted it by the government of the United States, or of this state, or by individuals, or corporations, to aid in the construction of its road, and may pledge, mortgage, or otherwise dispose of the same, etc.

By Sec. 8, as amended, the company is authorized to hold and dispose of any lands that the Superior & St. Croix Railroad Company might acquire, by purchase or otherwise, in any state or territory, through or in which it shall acquire, in any manner, and operate any railroad, or railroads, wherever the said lands may be situated.

By this amendment the Act has two subjects. First, to incorporate the Superior & St. Croix Railroad Company. Second, to buy, sell, or otherwise dispose of, lands within any state through which it may operate any railroad. These two subjects have no connection with each other.

Would one reasonably anticipate finding in the body of any Act, the title to which was to incorporate the Superior & St. Croix Railroad Company, a clause giving authority to said corporation to purchase, hold, or dispose of lands without limit? Is such a provision germane to such a title? The construction of a railroad, and the purchasing and disposing of lands have no rational connection with each other. The only subject mentioned in the title is the incorporation of the Superior & St. Croix Railroad Company. Such an Act might contain any provision necessary to carry out that purpose. An Act to incorporate the Superior & St. Croix Railroad Company would apprise neither the Legislature, or the public, that it covered provisions under which an unlimited amount of lands could be purchased by that corporation. The reading of such a title at once induces the conclusion that the various provisions of the Act relate alone to the incorporation of said railroad, and the Act itself must, therefore, be confined to that subject. The constitutional provision is violated, if an Act is amended, so as to embrace a purpose outside of its title. Whatever amendments are made must be amendments of the organic law, and not independent provisions relating to something else. The constitution has made the title, the index to the legislative intent as to what shall have operation. The purpose of the adoption of such a provision in the constitution of the state was that every measure presented for consideration should stand upon its own merits, and that the legislature should be fairly notified of the designs of the Act when required to pass upon it. Has the added provision any necessary connection with the subject stated in the title, or any connection with the subject treated in the Act? By no reasonable construction can the purpose of buying and selling lands be said to be embraced within a title to incorporate the Superior & St. Croix Railroad Company. The section of the Constitution prohibiting legislation of this character is a wise and wholesome one, intended to prevent legislators from being entrapped into a careless passage of sections and clauses in bills of which the title gives no intimation. The propriety of such an inhibition is apparent to all, and it must be observed and protected by the courts. Titles to legislative acts by reason of these constitutional provisions, possess very great importance. It not only requires that the purpose of the law should be correctly indicated, but it absolutely makes the title of the Act control, and exclude everything from the effect and operation as law which is incorporated in the body of the act, but is not within the purpose indicated by the title.

Is it probable that the Legislature of Wisconsin, having under consideration the amendments to the corporate Act of the Superior & St. Croix Railroad Company, if they had supposed or been informed that by the adoption of said amendments it was clothing said railroad company with the power to deal in lands, not necessary for use by its road, but conferring upon it a power without limitation, that such provision would have become a law. The title is not broad, but narrow; not general but specific. Under such a title no one would infer, and nobody was bound to imagine, that such vast powers had been conferred upon this corporation to deal in lands in the manner claimed by said company; a provision as to which the title not only did not relate, but by its narrow terms affirmatively and positively excluded.

In this connection I refer to the opinion of the Supreme Court of Wisconsin in the case of Milwaukee Co. v. Isenrig, 109 Wis., 19, in which Justice Marshall, speaking for the court, said:

> When an act is general merely because it is public, it is at the same time local and must be tested as to its validity by Sec. 31, Art. 7, and Sec. 18, Art. 4, as well, and if it belongs to one of the prohibited classes of special legislation, as it well may, it must also be tested by the constitutional restriction upon that subject.
>
> A challenge of the sufficiency of a law, under the constitutional restriction as to its title, is not a technical objection to be treated lightly by the courts. It is an invocation of a positive limitation upon legislative power, which the court cannot treat lightly without being guilty of usurpation. True, in such a case the title to the act must be liberally construed, giving all reasonable leeway for the exercise of legislative discretion. True, it would not be held insufficient if a reasonable doubt exists as to its sufficiency. But, just as true, the letter and spirit of the constitution should be maintained in all its integrity, by holding that a title is insufficient if so defective as not to reasonably suggest the purpose of the act it covers, so that in reading the act, with the full scope of its title in mind, provisions will not be found which are clearly outside thereof. If such a discovery is made, the court cannot give an unreasonable construction to the title, to bring the body of the act within it. The title must stand or fall as it is written, and without regard to consequences. In no other way can the purpose of the constitutional limitations be effective.

See also the decision of the court in the case of Diana Shooting Club v. Lamoreux, 114 Wis., 44, in reference to Sec. 18, Art. 4 above referred to.

4. Sec. 31, Article 4, of the Constitution of the State of Wisconsin, is as follows:

> The Legislature is prohibited from enacting any special or private laws in the following cases: 1st. For changing the name of persons, or constituting one person the heir at law of another. 2nd. For laying out, opening or altering highways, except in cases of state roads extending into more than one country, and military roads, to aid in the construction of which lands may be granted by Congress. 3rd. For authorizing persons to keep ferries across streams, at points wholly within this state. 4th. For authorizing the sale or mortgage of real or personal property of minors, or others under disability. 5th. For locating or changing any county seat. 6th. For assessment or collection of taxes, or for extending the time for the collection thereof. 7th. For granting corporate powers or privileges, except to cities. 8th. For authorizing the apportionment of any part of the school fund. 9th. For incorporating any town or village, or to amend the charter thereof.

We contend that under the 7th subdivision of Section 31, the amendments to the charter incorporating the Superior & St. Croix Railroad Company, adopted by the Legislature on April 15, 1895, are void. It cannot be denied that these amendments grant corporate power as well as privileges, and that to a very remarkable extent. The original Act of March 15, 1870, contained 22 sections. Of these 12 sections were amended, and 7 repealed, and 6 new sections added. Under the guise of amendments a new act to incorporate this company is made, new powers and new privileges are conferred upon it, and these of a very extraordinary character.

The Act under consideration not only authorizes and empowers the "Superior & St. Croix Railroad Company" to construct a railroad within the boundary of the State of Wisconsin, but to extend the construction of said railroad into several states, and into the Dominion of Canada. It not only can build a railroad, but is authorized to purchase any railroad, or railroads, to buy stock and bonds of any railroad. It may become a dealer in lands, buy and sell the same, in the states through which its railroad passes, and all these powers are conferred under an act, the title to which is to incorporate the "Superior & St. Croix Railroad Company."

That there was no intention by these amendments to carry out the original purpose of the Act to construct a railroad.

> Beginning at some convenient point on the west shore of the Bay of Superior, or on the south shore of the Bay of St. Louis, in the County of Douglas, running thence southerly by route as direct as may be practicable through the counties of Douglas, Burnett, Polk, St. Croix and Pierce via St. Croix Falls and Hudson to Prescott, with a branch or extension running westerly from the above designated place of beginning in Douglas County to such point on the Minnesota boundary, north of the Nemadji River, as may be deemed desirable by the directors of said railroad company.

Is apparent by the subsequent action of this company. From March 15, 1870, to July 8, 1896, the Superior & St. Croix Railroad Company, if it had any existence at all, such existence was on paper alone. Not a mile of this road had been constructed, there had been no money raised or effort made towards the construction of this road. The incorporation of the Superior & St. Croix Railroad Company up to

July 6, 1896, was only a float, and its only market value was the use it was put to on that date by changing its name to the Northern Pacific Railway Company, and within six months after this transformation it was the owner of more than 5,000 miles of track, and millions of acres of lands, with stock and bonds issued by it of more than $300,000,000, without a mile of the road constructed on the line designated in the original act, and all this vast property held under an act to incorporate the "Superior & St. Croix Railroad Company." It seems to me that if the amendments to this Act adopted April 15, 1895, confer the powers and privileges to carry on the business in this manner, such powers and privileges clearly fall within the condemnation of the seventh clause of Sec. 31, Art. 4, of the Constitution of the State of Wisconsin, and are therefore void.

In the case of Attorney General v. Superior & St. Croix Railroad Company, 93 Wis., 613, the court, in speaking of the amendments to the articles of incorporation of this company, said:

> Whether the provisions of Ch. 244, Laws of 1895, which greatly enlarge the existing rights, privileges and franchises of the company, and confer upon it others of a varied and most comprehensive and highly important character, are void, as being in violation of the 7th Clause of the Constitutional amendment of 1871 (Art. 4, Sec. 31) forbidding the enactment of "any special or private laws for granting corporate powers or privileges except to cities" is not presented by the information, so as to become a proper subject for judicial determination, and we neither express nor intimate any opinion in respect to these portions of the act."

The matter before the court was a motion by the Attorney General for leave to file an information in the nature of a quo warranto, and the court was of the opinion that so far as the question presented that the amendments were in conflict with the provisions of the Constitution referred to, the evidence did not show that the company had acted upon them. But in this case those facts are made to appear, by the purchase of the land in controversy by this company, and the sale of the same to the complainants in this case, and the action brought by them alleging title thereto.

5. If the Act, as amended, authorized the Northern Pacific Railway Company to purchase, and dispose of lands, that it may acquire, still it remains simply a law of the State of Wisconsin. It has no force or effect in the State of Minnesota.

A corporation is not a citizen (only in a qualified sense) of the state creating it. It can only act in another state on such conditions as the latter state sees fit to impose. Corporate existence is by universal law regarded as a franchise, which can never exist, except by positive authority, within the state which granted or confirmed its franchise. The strictly legal existence by force of obligatory law of a corporation is confined to the state which created it, and endowed it with its powers, capacities and rights, which it can only exercise in another state by the permission of the legislative power thereof, and when it assumes to act in such state, the enjoyment, and exercise of such right must conform to the law or settled policy of that state, not prejudicial to its interest, or those of its citizens. The power to take land in a corporate capacity is itself a franchise, the title passes by succession, the changes by death or otherwise among the corporators does not affect its disposition, as it does in private holdings.

The question whether a railroad company organized under the laws of Wisconsin is competent to take title to lands in Minnesota does not wholly depend upon the law of its creation. The laws and the public policy of the State of Minnesota, as indicated by its legislature, are material factors to be considered.

The Northern Pacific Railway Company owes its existence to the laws of the State of Wisconsin, and the powers and capacities, express or implied, are such as conferred upon it by its charter.

The question therefore is, first, whether the Northern Pacific Railway Company was clothed with authority to purchase these lands, within the State of Minnesota, and if so, second, whether the laws of Minnesota allows such purchase.

If the Northern Pacific Railway Company is clothed with the power to take, hold, and convey real estate, the statute of the State of Minnesota prohibits it from holding lands, except to a limited extent.

Section 5877, Gen. Stats. 1894, as amended by Ch. 129, Laws of 1899, provides:

> Sec. 3. That no corporation other than those organized for the construction or operation of railroads, canals or turnpikes, shall acquire, hold or own over 5,000 acres of land so hereafter acquired in this state; and no railroad,

canal or turnpike corporation shall hereafter acquire, hold or own lands so hereafter acquired in this state other than may be necessary for the proper operation of its railroad, canal or turnpike, except such lands as may have been granted it, by act of Congress, or the legislature of this state.

Provided, that the provisions of this act shall not apply to corporations hereafter organized for the purpose of taking, holding, owning and disposing of lands, or any interest therein now owned by the same persons, or their heirs, and devisees, who as tenants in common, or as joint tenants, owned the same prior to July 1, 1887.

This law was approved April 3, 1899, and given effect from and after its passage. The law was the same in 1889, with the exception of the proviso which was added by the amendment of 1899.

This statute indicates the policy of the state in this regard, and whatever may have been the capacity of the Northern Pacific Railway Company to take, hold and convey lands within the State of Wisconsin, the laws of Minnesota forbid that company and all other corporations to take, hold or convey lands in this state ,except such as may be necessary for the proper operation of its road. We therefore contend that the lands in this controversy did not pass to the Northern Pacific Railway Company, and that road could not transfer any title to complainants.

6. This is not a case where the title to the lands in question has ever vested in the complainants. The title to these lands, both legal and equitable, is in the several defendants. It is so alleged in the pleadings, and must necessarily be so in order that the complainants may maintain this action. The complainants' prayer in the bill is

> That the several defendants appearing to be now invested with such legal titles to such land * * may be adjudged and decreed to hold the same as trustees for your orators.

If the Northern Pacific Railway Company had no authority to receive such title it could pass no title in these lands to the complainants. We are not attacking the title of the complainants, but defending our own. We are endeavoring to show conditions, such as would prevent the complainants from obtaining the relief prayed for in their bill, and the question presented is whether this court will aid them in violating the law, and obtain a title which they have no power to hold. Case v. Kelly, 133 U. S. (L. ed.) 513; Bank of Michigan v. Niles (Walker, Mich.) 99.

If the Northern Pacific Railway Company had obtained a title to these lands, and it had come to the knowledge of the Secretary of the Interior that the company was not entitled to hold the same, would it not be the duty of the government to compel the return of the title to the United States? If the court is satisfied that the Northern Pacific Railway Company, under its charter has not the capacity to take, hold or convey these lands, that the legal title to the same has passed by patent to the defendants, the same result has been reached as would follow in an action by the government to vacate the title of the railroad company, and when accomplished, transfer the lands to the defendants.

7. It is claimed, that if the title to these lands did not pass from the Northern Pacific Railroad Company by the sale of the Special Master under the decree of the court, such

title was transferred by the Northern Pacific Railroad Company, by its deed dated December 21, 1899, to the Northern Pacific Railway Company. (Exhibit 43, Record page 478.) To this we say that if it should be found that the Northern Pacific Railway Company was not authorized to acquire title to these lands then such transfer from the Northern Pacific Railroad Company would be of no avail. If, however, it should be considered that the Northern Pacific Railway Company had a capacity to hold and acquire the title to these lands, the deed would still not be admissible in evidence, except in connection with the decree of the court requiring such deed to be given, because the two instruments are so connected as to be practically one instrument. If this court should be of the opinion that the record in this case did not disclose that the court had jurisdiction to order the sale of these lands then the deed from the Northern Pacific Railroad Company would not be entitled to be read in evidence.

8. There is no evidence in the record that the legal title of the Northern Pacific Railroad Company, if any it had, to these lands, was ever transferred to the complainants. The bill alleges (Par. 9, page 8 Record) as follows:

> And your orators further show that by virtue of the matters hereinbefore set forth, the said Northern Pacific Railroad Company became the owner and entitled to the possession of all the lands in the said Exhibit A. hereunto annexed described; and that thereafter and during the year 1898, all the rights, interests, and ownership in the lands described in said Exhibit A, which had been theretofore owned and enjoyed by the said Northern Pacific Railroad Company, were duly sold, conveyed and transferred to the Northern Pacific Railway Company, a corporation duly organized and doing business under the laws of the State of Wisconsin.

All this is a mere allegation that would require proof of the facts asserted. There is no proof of the transfer from the Northern Pacific Railroad Company, of its interest in these lands in 1898, to the Northern Pacific Railway Company, nor at any other time, except what may be deemed to have passed to said company at the sale by the Special Master, of these lands, under the order of the court, nor is there any evidence of any particular description of lands sold by said Special Master under said order. The decree for the sale of these lands was such that only lands of a particular character could be sold, and those lands thus specified should be sold in a particular manner. The complainants should therefore be required to show by evidence that the lands sold answered the requirements of the decree. No evidence of this kind appears.

The complainants appear to have relied entirely on the fact that because the descriptions of lands in this controversy appear in the several selection lists, this fact was sufficient to authorize a sale of these lands, and prima facie evidence that they were covered by the decree referred to; if we admit all this, what evidence have we that the lands in controversy were thus disposed of at said sale.

Then again, the statute provides that no sale of real estate under any order, judgment or decree of any United States court shall be made without previous publication of notice of such proposed sale being ordered, and that such publication was made once a week for at least four weeks prior to such sale, no evidence of such notice appears in the record of this case, nor was any notice given to any of the defendants of the confirmation of such sale.

9. The different land grant acts are similar in general provisions, and many of them have been at different times before this court for consideration. Little can be said of their purport and meaning, the title they transfer, and the condition upon which the lands could be used and disposed of, which has not already and repeatedly been said in its decisions. But there is one section of the Act creating the Northern Pacific Railroad Company not found in the other land grant acts, which deserves more than a passing notice in this controversy.

Section 10, of the Act (Appendex B) provides, among other things, that

> No mortgage or construction bonds shall ever be issued by said company on said road, or mortgage, or lien made in any way, except by the consent of the Congress of the United States.

On May 31, 1870, Congress authorized the company to issue its bonds to aid in the construction and equipment of its road, and to secure the same by mortgage on its property, etc. (Appendex C), but no other lien of any kind was authorized. The lands in controversy were not subject to a mortgage of any kind. It was free, and clear from any incumbrance whatever, and this applied to all lands, included in the land grant of said company, from Lake Superior to the Missouri River. This clause in the Act of Congress, by the acceptance of its provisions by the Northern Pacific Railroad Company, became a contract executed. Section 10 prohibits "a lien made in any way" upon this property. The government had a right to make this condition, and by its acceptance the grant was thus limited. The purpose of this provision was at all times to keep the granted lands free from liens for the benefit of the stockholders of the company, and place the land grant beyond the reach of those that might at times have charge of its affairs, and be inclined to exploit the holdings for their own selfish interest. If the grant was beyond the reach of those that were connected with the management of the Northern Pacific Railroad Company, if the company were prohibited from creating a legal liability in the shape of a lien, it is not clear how such a lien would be made effective by a decree of a court in a suit in which neither the United States nor the stockholders of the company were parties. This provision is the same as if Congress had stated that the lands embraced in this grant were exempt from sale under execution or decree. The United States as well as the stockholders are directly interested in the enforcement of this provision. So are the defendants who claim under an interest in these lands transferred to them by the United States.

II.

1. The lands in controversy are of two classes, patented and unpatented lands. This action involves the title to 10,601 acres of land. How many acres of these lands are patented is not disclosed by the record in this case. The only land appearing to have been patented is that included in the patent offered in evidence (Record, page 535.) The schedule

attached to the bill indicating lands that have been patented is not evidence of that fact. The only record of the disposition of these lands in the local land office is found on page 418 of the record. But still in the Circuit Court of the United States, as well as in the Court of Appeals, the number of acres of the patented lands are given at 3,400 acres. There was no evidence in the case other than of Exhibit 26 (Record, page 418), showing the date of the location of the lands in this controversy. If the location or entry of these lands cannot be spelled out of Exhibit 26, then there is no evidence to base the assertion of the Court of Appeals that the number of acres entered subsequent to January 1, 1898, amounts to 5,000 acres, and if the date of the application, and not the date when the entry was completed is to govern, then nearly all these lands were entered prior to January 1, 1898. But for the purpose of the question here presented, the date of the entry if patent has not issued is immaterial. The question to be determined is one of jurisdiction, can the action be maintained by the complainants to remove a cloud upon the title to these lands, when the complainants are not in possession, and no patents have as yet been issued; the legal title to the lands being still in the government, and the title to these lands are still in fieri. It seems to me that the question presented is not open to argument. It should be considered settled by the repeated decisions of this court.

Marquez vs. Frisbie, 101 U. S. (L. ed.) 800.

Johnson v. Towsley, 80 U. S., (L. ed.) 485.

Bockfinger vs. Foster, decided June 1, 1903, in the Supreme Court of the United States, and cases cited therein.

Upon a careful examination of the records in the Land Department, it appears that out of this 10,601 acres of land in this controversy, 2664 acres have been patented; the balance having not as yet been patented, the legal title still remaining in the United States. No better case than this could be found, in which the correctness of the rule of law could be exemplified, that until the legal title to lands has passed from the United States, and become vested in the hands of private parties, no action can be maintained by any person who claims an adverse interest in such lands for the purpose of having his rights in said lands adjudicated. Since the commencement of this action there has been cancelled by the Land Department, or held for cancellation 2,756 acres of the lands that are embraced in this controversy. There is no evidence of this fact in the record, except in the claim of William J. Pearce (See Record, 597.) The law is, that until the department has terminated its action on the several tracts embraced in this controversy, the courts will not interfere.

2. This action is brought by the complainants to determine the title to lands, claimed by 50 defendants, having each separate interest in 105 distinct tracts of land. If this action can be brought in this manner and sustained, then as many decrees would have to be entered as there are individuals claiming to own distinct tracts, or parcels of these lands, as each own in severalty.

The lands not embraced in patents are not subject to this form of action. It is then, only as to patented lands that our ~~attorney~~ attention should be directed. The complainants pray that as to these lands, the several defendants appearing to be now invested with the legal title, may be adjudged and decreed to hold the same as trustees for the complainants, and for their benefit, and that they may be required to convey such legal title to them.

One cannot be declared as holding lands in trust for another unless the party claiming the same has duly shown that he would be entitled to the patent from the government. It must appear that by the law properly administered the title should have been awarded to the claimant. He must show a better right to the land than the patentee, such as in law should have been respected. He must connect himself with the original source of title, and he must possess such equities as will control the legal title in the hands of the patentee.

Bohall vs. Dilla, 114 U. S. (L. ed.) 61.
Smelting Co. vs. Kemp, 104 U. S. (L. ed.) 875-879.
Sparke et al. vs. Pierce, 115 U. S. (L. ed.) 428.
Lee vs. Johnson, 116 U. S. (L. ed.) 570.
Boggs vs. Merced Mining Co., 14 Cal., 279-363.

These decisions conclusively show that before a court of equity, by its decree would declare that a party holds the legal title to a tract of land in trust for another, the party setting up such claim must make it appear that he is entitled to the land and that the government should have recognized his right. The controversy before us presents no such a case.

As a matter of fact the Northern Pacific Railroad Company never had any claim to these lands that could be enforced in the courts. Wisconsin Central R. R. Co. vs. Price Co., 133 U. S., (L. ed.) 687. True it is, that if the land had remained at the disposal of the government, the Northern Pacific Railroad Company might have acquired it; still it was at all times subject to the disposal of the government, and if this court by its decree should award these lands to the Northern Pacific Railroad Company it would assume that these lands had been properly selected, and that the selection had been approved by the Secretary of the Interior; that there was a deficiency in the grant entitling said Company, not only to lieu lands for said loss, but these identical lands for that purpose. The court by its judgment would be taking the place of the Secretary of the Interior, and determining what indemnity lands the Northern Pacific Railroad Company was entitled to. This determination has by Congress been conferred on the Secretary of the Interior.

This court would also have to determine that if the Northern Pacific Railroad Company had the title, it passed the same to the Northern Pacific Railway Company, and the only way that the Northern Pacific Railroad Company could be divested of its title to these lands as disclosed by the record, is through the proceedings in the Circuit Court of the United States for the Eastern District of Wisconsin; what authority that court had in the premises is not disclosed by the record in this case. The court must also find that the sale by the Special Master was in all respects legal and binding; that it passed the title to the Northern Pacific Railway Company, and that the Northern Pacific Railway Company was authorized to purchase, hold and dispose of the lands, and that the laws of Minnesota did not prohibit the sale.

3. The complainants claiming a fee title to the lands in controversy ask a decree that the defendants hold the legal title which they now possess in trust for them.

The Act of July 15, 1870 (16 St. at L. 305) requires:

> That before any lands, granted to said company by the United States, shall be conveyed to any party entitled thereto, under any of the acts incorporating or relating to said company, there shall first be paid into the treasury of the United States the cost of surveying, selecting, and conveying the same by the said company or party in interest.

That this payment has not been made is conceded. That such payment must be made before this action can be successfully maintained is apparent. The appellants seek a decree that the defendants hold these lands in trust for them. In order that such a decree may be made the complainants must be entitled to such a decree, at the time this action is brought. It cannot be expected that a decree will pass against the defendants, in anticipation of the appellants acquiring a title to these lands in the future.

To this the complainants answer, that it will be time enough for the company to settle with the government for the cost of surveying these lands, when their rights to these lands have either been conceded by the government, or established in the courts. The question presented, they say, concerns only the government, and the railroad company, or assignees and is one in which the defendants have no interest whatever. It seems of some concern to the defendants whether they are to be harassed and annoyed with an expensive litigation, prematurely brought, over the title to lands that, at the time of bringing the action, the complainants have not such an interest as would entitle them to a decree that the defendants hold said lands for them in trust. We think this position is fully sustained by the following decisions of this court.

Ankeny v. Clark, 148 U. S. (L. ed.) 475.

Kansas Pacific R. R. Co. v. Prescott, 83 U. S. (L. ed.) 373.

Union Pacific R. R. Co. v. McShane, 89 U. S. (L. ed.) 479.

III.

1. The extent to which lieu lands would be required to supply deficiency in the place limits cannot be properly or legally determined until there had been an adjustment of the grant of lands in respect to the loss within the place limits. No such adjustment of the grant of the Northern Pacific Railroad Company has yet been made; therefore the evidence given by Earl L. Marvin, (Record 253) and evidence from other persons of a like character becomes of no importance. It was so determined in the case of Oregon & California R. R. Co. v. United States, 189 U. S., 103.

2. The record in this case is so voluminous, and the questions arising are so numerous that a full discussion of them would be not only wearisome to the court, but laborious to the counsel.

Some of the questions that have become important under certain facies of the case may be briefly noticed.

a. The fundamental allegations of the bill are, that as the Northern Pacific Railroad Company made certain preliminary selections of land, and had never abandoned such selections, the company became, by reason of such selections, possessed of a vested right therein, and by mesne conveyances this right passed to the complainants. On this theory these selections would not be valid unless they were made in accordance with the directions of the Secretary of the Interior.

By the third section of the granting Act, the Northern Pacific Railroad Company was to receive,

> Every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections of land per mile on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said road whenever it passes through any state.

Congress did not intend to grant to the Northern Pacific Railroad Company twenty alternate sections of land per mile when the railroad passed through a state; the grant was not one of quantity, the intention was to grant ten alternate sections of land per mile on each side of the railroad line. No right to take more land on each side of the line of road than what would amount to ten sections per mile on that side was conferred.

The selections made in this case entirely disregarded this rule. Many of the selections made by the Northern Pacific Railroad Company east of Duluth have been made for lands lost on the south side of the line of road, while the lieu lands, the subject of this controversy, were situated north of the line of said road. By what right or authority can the Northern Pacific Railroad Company obtain more than ten alternate sections of land per mile on each side of its line of road within the State of Minnesota? If there is a deficiency on one side, can the company go upon the other side of the line to make it good? If so, in some places the company would receive more than ten alternate sections of land per mile on one side of its road.

The grant to the Northern Pacific Railroad Company was ten alternate sections of land per mile on each side of the railroad, whenever it passed through any state. The language is plain. No construction of its meaning, or the intention of Congress in using those words is necessary. The grant was ten alternate sections of land per mile on each side of the line of said road. It was not a grant of twenty sections of land per mile, or fifteen here and five there. The grant to the Northern Pacific Railroad Company was not a grant in quantity, but for a certain number of sections in place, and if not in place, then it gave to the company the privilege of looking for the deficiency in other restricted limits. If the company did not get the full amount within the primary limits, and fails to make up its losses in the secondary limits on the same side of the line of road in which the loss occurred there is no violation of contract anywhere, but only the happening of a contingency plainly contemplated by the Granting Act, subject to which the company made its contract.

If there was only nine sections per mile in the place limits on the south side of the road at the time of the definite location the company would have a right to select on the south side of the road one section within the first indemnity limits not more than ten miles beyond the granted limits; and under certain conditions, if the land could not be found within the first indemnity belt, then such deficiency could be sought on the south side of the road within ten miles beyond the limits prescribed by its charter, but it is always ten alternate sections of land per mile on each side of the line of road, no more, no less.

United States v. Burlington & Missouri R. R. Co.
4 Dillon, 297.
Same, 98 U. S., (L. ed.) 198.

b. On August 4, 1885, the Commissioner of the General Land Office, with the approval of the Secretary of the Interior, issued a circular (4 L. D., 90) to the registers and receivers of the United States local land offices, instructing these officers as to their duty, where railroad selection lists were offered for their approval. Among the requirements mentioned therein was one requiring the selecting officer to attach to said list, his affidavit averring under oath "that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner." This allegation is essential, it would apply to all lists filed with the Register and Receiver, and without such affidavit the list filed would not have the effect of segregating the land. The list would be defective if such affidavit was not attached, notwithstanding a subsequent examination made by the Commissioner of the United States General Land Office, it should be discovered that the allegations required to be set forth in the affidavit to be attached to the list were, as a matter of fact, true. The selection list, without the affidavit attached would have no more force than so much waste paper. Another requisite equally necessary to be observed is the one requiring that "the lieu selections must be made from vacant, unappropriated land within proper sections and limits nearest the granted sections in which the loss occurred." This provision has been entirely disregarded with reference to the lands in this controversy, being lands in lieu for lands lost within the place limits of the grant, as will be seen from the examination within the grant, made by W. W. Burke, who was a witness in this case (see record 229) and Exhibits A, B, C, D and E, from pp 602 to 627 inclusive), and these facts stand uncontradicted and unimpeached, and they show a large number of acres of vacant and unappropriated public lands lying nearer the granted sections in which the loss occurred than the lands in this controversy, so that it would appear, even on the theory of the complainants, that the preliminary selections claimed by the complainants to have been made of these lands by the Northern Pacific Railroad Company were not made as required by the circular of the Land Department.

c. Most of the lands in this controversy are within the second indemnity limits. Lands thus situated could not be selected in lieu of lands lost in place, until lands within the first indemnity limits have been exhausted. No legal selections could be made within the forty-mile limit without some certificate or affidavit attached to the selection list evidencing the fact that the grant cannot be satisfied within the first indemnity, and that the losses assigned as bases occurred from disposals subsequent to the passage of the Act of July 2, 1864, as required by the Joint Resolution of May 31, 1870.

Northern Pacific R. R. Co. vs. Bass, 13 L. D., 201.
Northern Pacific R. R. Co. 18 L. D., 596.

The evidence in this case shows (Record pp 602 to 605, 608, 609) that there was a large amount of vacant, unappropriated public lands within the first indemnity limits, nearer to the lost lands than the lands in controversy, and this evidence is not disputed. If these facts be true, the lists filed by the company of lands selected, was not made in accordance with the directions of the Secretary of the Interior.

IV.

1.—Considerable stress is laid upon the showing made by the complainants, that there is a large deficiency of lands in the granted limits, within the State of Minnesota. A deficiency in a land grant of this character is not unusual; the quantity of lands granted for such purposes, is generally not found when the final adjustment takes place, when the privilege of looking for lieu lands is confined to restricted limits. If the company does not get the full amount of the sections within the primary limits, and fails to make up its loss in the secondary limits, it is only a happening of a contingency plainly contemplated by the granting act, subject to which the company made its contract. The grant of lands to the Northern Pacific Railroad Company, was not a grant in quantity. No one, however, can charge the Northern Pacific Railroad Company with not being sufficiently aggressive, when the subject of lands was in question. In 1871, when the line of the road was definitely located, the Land Department withdrew from sale or other disposition, not only the lands within the granted limits, but those lands within the indeminty limits, and these lands were kept in reservation until the order of revocation May 23, 1887, (6 L. D. 82), and that order was modified as far as it effected the Northern Pacific Railroad Company by the decision in the case of the Atlantic & Pacific R. R. Co., 6 L. D., 84-91: "As to the lands covered by unapproved selections." As all the lands within the indemnity limits were covered by unapproved selections, the order revoking the withdrawal did not materially effect the Northern Pacific Railroad Company. This grant must be adjusted as an entirety. It will probably be adjusted in the usual manner, notwithstanding the efforts of the complainants in this case.

A similar effort was made in the case of Oregon & California R. R. Company vs. United States, supra. In that case this court held, that until adjustment was had, it could not be determined whether there was a deficiency or not.

The evidence in this case (Exhibit N., Record pp. 766-769) shows no deficiency. The decisions of the Land Department are to the effect that whether such deficiency exists or not, can not now be determined. Northern Pacific R. R. Co. vs. Streib, 26 L. D. 589. Northern Pacific R. R. Co., 25 L. D. 511. No attempt has been made to show a deficiency within the second indemnity limits within the State of Minnesota, but the evidence is that the Northern Pacific Railroad Company has selected lieu lands largely in excess of the lands lost within the primary limits of the grant. (Exhibit 49, Record pp. 496.)

2.—Any title to these lands that the complainants may have, must come through the rights possessed by the Northern Pacific Railroad Company, and, as such, are effected by the provisions of the Act of July 1, 1898. Nearly 40,000 acres of lands of a similar character, lying east of Duluth, were conveyed to the complainants by the Northern Pacific Railway Company, and suits are now pending in the courts to determine the title to the same. It is now claimed that the Northern Pacific Railway Company is not bound by its acceptance of the provisions of the Act of July 1, 1898, (Exhibit L, Record 758) because, at the date of its acceptance, such company had no title to these lands. The company, however, found no objection to its taking advantage of the provisions of this act when such acceptance was deemed for the benefit of the company. (Exhibit G., Record pp. 662.)

Those persons connected with the scheme to reorganize the Northern Pacific Railroad Company, were active in procuring the enactment of the law of July 1, 1898, as well as the subsequent amendments to the law, including the patented lands, but for some reason not apparent, all lands east of

Duluth were considered outside of the beneficial provisions of said act. The Northern Pacific Railway Company is not a land grant railroad; neither is it in any way the successor of the Northern Pacific Railroad Company. A sale did not transfer to it all the benefits arising under the act of July 2, 1864. It was not necessary, in order to bind the company, that either the Northern Pacific Railroad Company or the Northern Pacific Railway Company should accept the provisions of the of act of July 1, 1898. In Section 20 of the Act of July 2, 1864, Congress reserved the right to add to, alter, amend or repeal said act, provided due regard was had to the rights of the Northern Pacific Railroad Company; and no one can say but that due regard was had for the rights of said company when the evidence in this case is considered. The Northern Pacific Railway Company, at the sale of these lands, paid nominally a price for the same equal to three dollars per acre. This amount was not paid in cash, but in the indebtednses of the Northern Pacific Railroad Company, the value of which was subsequently determined by the Court at a little less than three cents on a dollar. If we consider the amount paid for these lands by the complainants as truly stated in the consideration expressed in the deeds to them, the price would be five dollars per acre. The evidence of W. H. Smallwood (Record, pp. 267) shows that the right to take lieu lands under the provisions of the act of July 1, 1898, was considered of the value of seven dollars per acre. So that, independent of any acceptance of the provisions of said act by either company, the act would be effective.

3.—The grant of 50,000,000 acres of the public domain to aid in the construction of the Northern Pacific Railroad Company, while enormous in its proportions, would not have caused so much discontent in the Northwest if the law had been understood and construed as it is at the present time. To make up any deficiency in the grant, the odd sections within an extent of twenty miles on each side of the line of road beyond the granted lands, was withdrawn, and have been in a state of reservation for upwards of thirty years. It seems to me that the remarks of Justice Miller in the case of St. Paul and Sioux City R. R. Co. vs. Winona and St. Peter R. R. Co., 112 U. S. (L. Ed.) 872-876, would be applicable,—

> Was there a vested right in this company, during all this time, to have, not only these lands, but all the other odd sections within the twenty mile limits on each side of the line of the road await its pleasure? Had the settlers in that populous region no right to buy of the Government because the company might chance to take them or might, after all this delay, find out that it was necessary to make up deficiencies in other quarters? How long were such lands to be withheld from market and withdrawn from taxation and forbidden to cultivation?

Has not the company had ample time to assert any rights it may have had in these indemnity lands.

If the law at the beginning had been understood to be what it is now declared, this grant would have been adjusted long ago. The company would have taken active steps to obtain its title, and when secured, would have been equally as acitve in disposing of the same, because the burden of taxation upon such a large body of land, would have eventually found its way into the possession of those who would have acquired this land from the Government, had no grant been made.

But by one sweeping order of withdrawal, the whole domain was covered as with a blanket, and thus prevented settlement on these lands. The company was more than willing to have the lands remain in this condition, because it well knew that as time went on the lands would become more valuable, without cost to the railroad company, and that such advance price, while detrimental to the interest of the public, would be to its own private advantage.

4—Is the Northern Pacific Railway Company the successor to the Northern Pacific Railroad Company? If so, in what way did it succeed to the rights of the Northern Pacific Railroad Company. A sale of its property under a decree of foreclosure, would not clothe it with all the rights of the Northern Pacific Railroad Company under its grant of July 2, 1864. In this grant to aid in the construction of the Northern Pacific Railroad Company, the people had some rights, as well as the company. The act of July 2, 1864, was not passed for the sole benefit of the Northern Pacific Railroad Company; mutuality in benefits was expected and intended, and mutual obligations were entered into, and equity, and good conscience would require of both parties a faithful observance of these obligations.

It may safely be affirmed, that those individuals interested in the re-organization of the Northern Pacific Railroad Company, were not moved entirely by altruistic considerations. The real necessity for such reorganization is not to be found in the insolvent condition of such company, but in the knowledge that it had become a very valuable property. The re-organization was for the purpose of destroying the value of a large amount of its liabilities for the benefit of a luxurious and unscrupulous class within the inner circle, that the remaining assets might be appropriated by private individuals to enrich themselves at the expense of others. Truly, the present tendency of modern finance is towards the reorganization of public utilities, the safest and most profitable form of public robbery, to appropriate the accrued value of franchise property, to increase the bonded debt enough to absorb all present earnings, and to deceive the public as to the actual costs of the investment, to give to airy nothings a local habitation and a name.

H. H. HOYT,
Solicitor for Defendant Waldo A. Avery and Others.

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APPENDIX A.

AN ACT

To incorporate the Superior and St. Croix Railroad Company.

The People of the State of Wisconsin represented in Senate and Assembly do enact as follows:

Section 1. That I. W. Gates, R. G. Coburn, E. W. Anderson, Jr., Hiram Hayes, S. H. Clough, Hiram Robbins, D. W. Maxon, John J. Talmadge, H. L. Palmer, S. B. Dresser, O. S. Powell and such other persons as may be associated with them who shall become stockholders in the association or corporation hereby created, in accordance with the provisions of this act, shall be and they are hereby created a body corporate and politic by the name and style of the Superior and St. Croix Railroad Company, and by that name shall have perpetual succession, be competent to contract and be contracted with, sue and be sued, implead and be impleaded, answer and be answered, defend and be defended in any court whatever. The said corporation may make, have and use a common seal, which it may alter or renew at pleasure; it shall be capable of acquiring by deed, lease or other conveyance, a fee simple or any less estate in lands, tenements or easements in the same, and of conveying any such estate or interest by deed, lease or other conveyance, or of holding such estate or interest, or any other estate necessary for the use of said railroad, either real, personal or mixed, and shall have and enjoy all the privileges, franchises or immunities incident to a corporation, and may do and perform all and singular the acts and matters which to any corporation it shall lawfully appertain to do and perform for the well being of said corporation.

Section 2. The said company by this act created is hereby authorized and empowered to survey, locate, and from time to time alter, change and re-locate (so as to not materially to change the route) and to construct and complete, perpetually to have, use and enjoy, maintain and operate the said railroad with one or more tracks or lines, over and along the following routes, that is to say: beginning at some convenient point on the west shore of the Bay of Superior or on the south shore of the Bay of St. Louis in the County of Douglas running thence southerly by route as direct as may be practicable through the counties of Douglas, Burnett, Polk, St. Croix, and Pierce via St. Croix Falls and Hudson to Prescott with a branch or extension running westerly from the above designated place of beginning in Douglas county to such point on the Minnesota boundary north of the Nemadji River as may be deemed desirable by the directors of said railroad company.

Section 3. The company hereby created shall have the perpetual right, power and authority to transport, take and carry property and persons upon said railroad by steam or other power and to receive and store away any property in any of its depots or other buildings, and to make, construct, maintain and use all such switches, turn outs, side tracks as it shall deem necessary, and also to construct, erect and maintain all such depots, station houses, warehouses, car houses and shops, engine houses and all other buildings, fixtures and things for the accommodation of said company and its roads and those using the same. And said railroad company shall have power to connect its road with any other railroad and to operate the same or to run in connection with any such railroad in such a manner as may be agreed upon between the boards of directors of this company and any such railroad. And any railroad company or association having a railroad built or partly built running in the direction of the line of railroad which the railroad company hereby created, is authorized to construct and operate and which this company by this act created shall agree to use or connect with is hereby authorized to make such lease or sale to this company or corporation perpetually or for a limited time of the whole or any part of their railroad so constructed or partly constructed, together with the rolling stock, machinery, buildings, tenements or fixtures, and all other property, real, personal or mixed, of the said company or association, together with its franchises, rights, privileges and immunities, or to sell the same, and in consideration of such lease or sale to take or receive such rents or payments as may be agreed upon.

Section 4. The said company shall have the right, authority and power, and it is hereby authorized and empowered to construct its railroad along and upon a crop under or over any public or private highway, road or streets, plank road or railroad if the same shall be necessary, but the said company shall put such highway, road, street, plank road or railroad in such condition and state of repair as not to impair or interfere with the free and proper use and also to erect and maintain all necessary bridges for the use of their railroad over any stream of water or water course at such points of crossing the same as said road may be located, with all necessary abutments, piers, arches and foundations.

Section 5. It shall be lawful for the company hereby created, and it shall have the right, power and authority by its officers, engineers, agents, servants and workmen, to enter upon any land for the purpose of exploring, surveying, locating and determining the routes of said railroads and when said routes or any portion thereof shall be determined by resolution, adopted by its board of directors, it shall be lawful for said company, and it shall have the right, power and authority by its officers, engineers, agents, contractors, surveyors, servants and workmen, at any time, to enter upon, take possession, occupy and use any land along and including the line of said route not exceeding one hundred feet in width. It shall also be lawful for said company and it shall have the right, power and authority, at any time, to enter upon, take; possess and occupy and use any other lands beyond said limits of one hundred feet which the directors shall, by resolution adopted by them, (a copy of which shall be recorded at the expense of said company in the office of the register of deeds, in the county in which said lands are located), declare to be necessary for the use of said company for the purpose of erecting depot buildings, station houses, machine shops, freight houses, warehouses, engine houses or buildings or fixtures of any kind, or ground about the same, for the convenient operation of the road or for making drains or giving proper direction to water courses, or of directing or changing the channel of water courses, or for the purposes of removing such substances or things as may endanger, obstruct or interfere with the free use of said road, or for the purpose of depositing earth, gravel, stone, timber or other material for embankments, structures or superstructures necessary to the construction, repair or removal of said road. Said company shall, however, at such time and in such manner as is provided by, and in this chapter and act, be liable to pay the full value of all earth, gravel, stone, timber and land which may be so as aforesaid, taken, possessed, occupied and used for any of the purposes aforesaid, which is the private property of either persons or corporations, which value (unless the owner thereof and said company shall agree as to the same), shall be ascertained and determined in the manner hereinafter provided; and whenever the same shall have been paid, tendered or deposited, as provided in this act, and estate in and to all and every such lands in fee simple, absolute forever, shall be and become vested in said company by virtue thereof, and of the provisions of this act, and by the same means a complete title shall vest in said company in and to all such earth gravel, stone and timber; and whenever said company shall deem that such property or any part or portion of such property shall no longer be necessary for the purposes for which the same were taken, it is hereby authorized and empowered by deed or other instrument in writing to lease or sell the same or any part thereof.

Section 6. On the completion of said road, or any part thereof, it shall be lawful for said company, and it is hereby authorized and empowered, to demand and receive such sum or sums of money for the transportation of persons and of property and for the storage of property as it shall from time to time deem reasonable.

Section 7. Said company hereby created shall also have full power and authority to transport persons and property in boats, vessels, barges, and other water craft on any of the navigable waters which its said railroad or roads run to or connect with, and to receive and collect reasonable compensation for the same and for that purpose may build or purchase, own and use such boats, vessels, barges and other water craft as it may require.

Section 8. The company hereby created shall be capable in law of taking and holding any land granted to it by the government of the United States or of this state or by individuals or corporations to aid in the construction of its road and may also pledge, mortgage or otherwise dispose of all their rights, title and interest in and to said lands and in any other estate, real, personal or mixed, of which they may be seized at the time of the execution of such mortgage or which they may acquire subsequently thereto, in such manner and on such terms as the directors may think proper.

Section 9. All the affairs of said company shall be managed by a board of directors who shall be stockholders and who are hereby invested with all the powers of the corporation. They shall be chosen annually by ballot by the stockholders at the annual meeting of the company, which shall be held on such notice and at such time as shall be prescribed by the by-laws and at such place as shall be prescribed by the board of directors and stated in such notice. At all meetings of the stockholders every stockholder shall be entitled to one vote for each share of stock held by him or her and may vote in person or by proxy duly authorized, and no business shall be transacted at any meeting of the stockholders unless a majority of the stock subscribed is represented. In all elections of directors those stockholders equal to the number to be elected having the greatest number of votes shall be deemed and declared duly elected. The elections shall be conducted in such manner as shall be prescribed by the by-laws of the company, and if from any cause an election of directors shall not be had at the time when by the provisions of this act or of the by-laws, it should be had, the same may be held at any other time on notice to be given as aforesaid, and until such election be had, the directors of the preceding year shall continue to act and the corporation hereby created shall not forfeit or loose any of its privileges, franchises or immunities for a less period than ten consecutive years. The board may at any time increase or diminish the number of directors to be elected at the next annual meeting of the stockholders, and the number to be elected shall be specified in the notice of election, but shall never be less than five or more than eleven.

Section 10. A majority of the board of directors shall constitute a quorum for the transaction of any business. They shall meet at such times and places, and be convened in such manner as they shall decide upon. They shall elect one of their own number to be president and one to be vice president. The president shall, when present, preside at all meetings of the board and of the stockholders and when absent the vice president shall discharge the duties of the president, and when both are absent the directors may appoint a president pro tem. The board of directors shall have power to appoint an executive committee and prescribe its powers and duties to appoint a secretary, treasurer and such engineers, superintendents, agents and other officers as they may deem necessary and remove them at pleasure, prescribe their duties and compensation, and may demand adequate security for the discharge of their respective duties and trusts.

Section 11. The persons named in the first section shall be the first directors and shall hold their offices until the first Wednesday of May, A. D. 1871, and until others are chosen in their places, and in case of vacancy in the directors, or by reason of the death or resignation of any director, or of his ceasing to be a stockholder, it may be filled by the remaining directors until the next annual election or until some other person shall be elected to fill the same. The directors herein named may appoint three persons, who shall be stockholders to be inspectors at the first election after which the stockholders shall choose three such inspectors at the annual elections. If no inspectors are chosen the directors may appoint three from time to time. If at any time an election of directors shall not take place on the day appointed by this act, the corporation shall not for that cause be dissolved, but an election may be held on another day in such manner as shall be prescribed by the directors or provided for by the by-laws.

Section 12. The said company shall have authority and power and it is hereby authorized and empowered in its corporate capacity to borrow any sum of money from any person or persons, corporation or body politic of any kind, and to make, execute and deliver all the necessary writings, notes, bonds, mortgages, or other papers and securities in amount and kind as may be deemed expedient by said corporation in consideration of any such loan or in the discharge of any liabilities that it may incur in the construction, repair, equipment or running of said road and the powers of said corporation for the purposes aforesaid and for all purposes necessary to carry out the objects of said company, viz: the construction of a railroad from and to the points aforesaid, are hereby ratified and confirmed and the contracts and official acts of said company declared binding in law and equity upon said corporation and upon all other parties to such contracts. Said company shall also have authority and power and it is hereby authorized and empowered in its corporate capacity to make, execute, issue and deliver its bonds and obligations from time to time any at any time in such an amount that all the bonds of said company outstanding at any one time will not exceed the amount of the capital stock of said company. The directors of said company are hereby authorized and empowered to prescribe by resolution to be by them adopted, the sum or sums for which each of said bonds shall be issued, the time or times and place or places when and where the principal and interest of the same shall be payable and whether payable to order or to bearer or how otherwise negotiable, the rate of interest which such bonds shall bear and the manner and form in which the interest coupons annexed to them shall be executed; and to secure the payments of any or all of such bonds the said corporation is hereby authorized and empowered in its corporate capacity to make, execute and deliver a mortgage or deed of trust upon the whole or any part of its railroad constructed or authorized to be constructed, and of any or all of its real estate, personal or mixed, in possession or expectancy owned and acquired, or to be thereafter owned and acquired by said corporation; and the said company is also hereby authorized and empowered in and by such mortgage or deed of trust to confer upon the trustees or mortgagees full and ample powers, to enter into and upon, and to take possession of, have, use and enjoy or to sell and dispose of the whole or any part of said railroad or its estate, together with the functions appertaining to said railroad, and all corporate and other franchises, rights and privileges of said corporation; and the directors of said company are hereby authorized and empowered to prescribe by resolution adopted by them all matters relating to the form and terms of any such mortgage or deed of trust, and of its execution and delivery, and they are authorized to provide for the periodical payments to such trustee or receiver as they shall appoint a certain sum to create a sinking fund with which to pay off or discharge at or before maturity any or all of the bonds by them authorized to be issued; and also to provide the manner in which trustee or receiver shall pay out or dispose of said sinking fund, and to authorize him to designate by lot or in any other suitable manner, the bond or bonds to the payment of which such sinking fund or any part of it shall be applied and the said board of directors are hereby authorized and empowered to sell, pledge, hypothicate or otherwise dispose of, either for money, work or material, to be used in the construction and equipment of said railroad, all or any portion of such mortgage bonds, or other securities or bonds received from any county town, village or city at par or at such price less than par as the said directors may, by resolution to be by them adopted, deem advisable; any such mortgage or deed of trust and every discharge or satisfaction thereof may be recorded in the office of the secretary of state in a proper book kept for that purpose and the certificate of such recording endorsed on such mortgage or deed of trust shall have the same effect as if such mortgage or dee dof trust was recorded in the several counties through which such road may run, and such record in the office of the secretary shall be sufficient notice to all persons.

Section 13. The company hereby created shall for all and every of the lands and property which it shall appropriate, take, possess, occupy or use (unless the same being donated to them pay the value thereof at the time thereof at the time and in the manner herein provided; and such value shall be ascertained, fixed and determined by mutual agreement between the said company and the owners of such land and property respectively, or by and through the medium and appraisement and determination or award of commissioners appointed as hereinafter provided.

Section 14. When the said corporation shall not agree with the owner or owners of such required land for the purchase thereof or as to the compensation to be paid therefor, or when, by reason of the legal incapacity or of absence of such owner or owners, no such agreement can be made, then and in that case it shall be lawful for any judge of the supreme court or county courts of this state on application of the said company or the owner or owners of any such land and at the cost and charge of said company to appoint three disinterested persons residing in the county through which the said road runs whose duty it shall be to view and examine the lands so taken with the buildings and improvements, if any thereon, and to estimate the value of the lands so taken and required by said company, and all the damages which the owner or owners thereof shall sustain or may have sustained by reason of the taking of the same for the construction and use of said road or works appertaining thereto. And it shall be the duty of said company or of the owner or owners aforesaid, as the case may be, to give three weeks notice of their application to the judge of the supreme, circuit or county courts, for the appointment of said commissioners to be published for three successive weeks in a newspaper published (if there be any) in the county in which such land may be situated, and the affidavit of the printer or publisher shall be sufficient legal evidence of such publication; and the persons so appointed before entering upon the discharge of such duties shall take an oath before some justice of the peace or other person competent by law to administer oaths, faithfully and to the best of their ability to examine the lands so taken or required by said company and impartially to estimate and appraise the value of the same and the damage or injury which the owner or owners thereof shall have sustained or may sustain by reason of the taking and use thereof by said company, whereupon such commissioners shall proceed to examine the premises and estimate the value of such land and the amount of damage, and they, or a majority of them, shall make a report in writing of such valuation under their hands and seals to the circuit court of the county where the land lies, and shall return the same within ninety days after their appointment to the clerk of the circuit court of the county where they reside, and it shall be the duty of the said clerk to immediately file the same; and in case no appeal shall be made within thirty days after the filing of the said report as hereinafter provided then the said clerk shall record the same at the expense of said company and judgment of the said court shall be entered thereon on motion of either party at any term of said court; provided, that either party may appeal to said court within thirty days after said report shall have been filed in the clerk's office and such appeal shall be tried in the same manner as other issues on trial in said court; and the jury empanneled to try the same shall find the value of the land so taken as required by said company and the damages which the owner or owners thereof shall have sustained by the taking of the same and the judgment of the said court shall be entered accordingly; provided, also, that it shall not be lawful for the said commissioners or said court to proceed in the assessment of damages or in the valuation of any land or materials as aforesaid in the absence of the owner or owners, his, her or their agents or attorneys unless it is shown to them by competent testimony that the said owner or owners shall have had at least five days notice of the time and place at which such assessment or valuation was to be made or that the said owner or owners are absent from the State of Wisconsin and if the said owner or owners shall be minors or non compos mentes or absent from the state the service of notice may be made on the guardian or trustee, if there be any, or in such manner as the court may direct; provided, also, that upon the making and filing of the report as aforesaid and payment in legal tender of the amount of any valuation or appraisal specified therein to the owner or owners of any such lands his, her or their legal representatives on payment thereof into the circuit court of the county in which such lands shall be situated for the owner or owners thereof the said company, their agents or the contractor for making or repairing said railroad, may immediately take and use the same without awaiting the issue of any appeal brought thereon; and, provided, also, that in case of an appeal as aforesaid, by the owner or owners of such land, the said company immediately on notice of the perfection of such appeal shall pay into court to abide the judgment therein the amount awarded by such commissioners, and in case of any appeal by the company it shall be the duty of such company to execute a bond with sufficient surety to be approved by the court, conditioned to pay any judgment that may be rendered therein and to abide by the order of the court in the premises; such bond shall be filed at the time of entering the appeal, and in case of neglect or refusal unless further time so to do shall have been granted by the court, the appeal may be dismissed on motion. Whenever any judgment shall have been entered as herein provided for the value of any lands or for any damages for taking and using the same and the amount specified in such judgment shall have been paid or tendered to the owner or owners of such lands, his, her or their legal representatives, the said company shall be entitled to the estate and interest in the same as fully as if it had been conveyed in fee simple and if such valuation be not received when tendered it may at any time thereafter be received or may be collected from said company by action at law at the cost and expense of the person or persons entitled to the same, provided that the costs of any proceedings and judgment specified in the last preceding section shall be taxed by the court and paid by such company except in cases when upon appeal the verdict of the jury shall be for the same or for a less sum than that reported by the commissioners.

Section 15. The capital stock of the company hereby created shall in the first instance be five millions of dollars, which capital stock may be increased to any sum not exceeding ten millions of dollars; the said capital stock to be divided into shares of one hundred dollars each.

Section 16. The several counties, towns, cities and villages upon or contiguous to the line of the said road, by this act authorized to be constructed as the same may be hereafter located and established, are and each of them is hereby authorized to aid in the construction of said railroad by subscribing to the stock of the company and paying for the same in money, and levying a special tax to raise money for that purpose, or by issuing bonds to said company in payment for said stock and levying taxes to pay the interest as it accrues upon said bonds, and to establish a sinking fund for the gradual redemption and ultimate full redemption of said bonds at maturity; and for these purposes the boards of supervisors or officers of such counties or towns; the boards of trustees of such villages, and the common council of such cities respectively and severally shall have power to negotiate and arrange the terms and conditions upon which such aid shall be granted; to enter into all proper contracts with said company in relation to the same and to adopt such ordinances and regulations pertaining thereto or to the taxes to be levied under this act as may be expedient and proper and consistent with law; provided, that before any such aid shall be granted or contracted for by any such county, town, village or city, the question of granting the same shall be submitted to a vote of the electors thereof respectively, as hereinafter provided.

Section 17. Whenever the president and secretary of the said Superior and St. Croix Railroad Company shall certify under their hands and the seal of the said company to the authorities of any such county, town, city or village that the route of said railroad has been located through or contiguous to such county, town, village or city, it shall be the duty of the authorities thereof hereinbefore mentioned, to call a special election to determine the question whether aid shall be granted to said company in the manner prescribed in the preceding section of this act, such election shall be called, notice thereof shall be given, the form of ballots shall be prescribed and all regulations relating to the same be determined by the proper authorities hereinbefore mentioned, of such counties, towns, villages and cities so that the question be fairly submitted to a vote of the electors. In case at any such election the majority of votes shall be against granting such aid the proper authorities may afterward in their discretion call another election upon the same subject and the same shall be conducted in a like manner.

Section 18. If at any election authorized by this act any such county, town, village or city shall vote in favor of granting such aid by a majority of the votes cast at such election then the authorities thereof shall have and exercise in their discretion the powers conferred upon them by the preceding sections of this act and all the contracts made by them by virtue thereof shall be valid and enforcible according to the true intent and meaning thereof.

Section 19. The several counties, towns, villages and cities which shall subscribe for the stock of said company as authorized by this act, are hereby authorized severally to own, control and dispose of the same in the same manner as an individual might do, and to vote upon the same by agents, duly authorized, at an election held by the stockholders of the said company.

Section 20. All property which the company hereby created is authorized to appropriate, take, possess, hold or use by making payment therefor, is hereby declared to be taken for public use as soon as the company shall so appropriate, take, possess, hold or use the same.

Section 21. It is hereby declared that in the judgment of the legislature of this state the objects of the corporation hereby created, cannot be attained under the general laws.

Section 22. This act is hereby declared to be a public act and the same immediately after the passage thereof shall be printed by the state printer and be in full force and effect from and after its passage.

J. M. BINGHAM,
Speaker of the Assembly.

THAD. C. POUND,
President of the Senate.

Approved March 15, 1870.
LUCIUS FAIRCHILD, *Governor.*

AN ACT

To amend Chapter 326 of the private and local laws of 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company."

The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

Section 1. Section one of Chapter 326 of the private and local laws of 1870, is hereby amended so as to read as follows: "F. W. Gates, R. G. Coburn, E. W. Anderson, Jr., Hiram Hayes, S. H. Clough, Hiram Robbins, D. W. Maxon, John J. Talmadge, H. L. Palmer, S. B. Dresser, O. S. Powell, James Edwards and Peter E. Bradshaw, and such other persons as may be associated with them, who shall become stockholders in the association or corporation hereby created in accordance with the provisions of this act, shall be and they are hereby created a body corporate and politic by the name and style of the Superior and St. Croix Railroad Company, and by that name shall have perpetual sucession, be competent to contract and be contracted with, sue and be sued, implead and be impleaded, answer and be answered, defend and be defended, in any court whatever. The said corporation may make, have and use a common seal which it may alter or renew at pleasure; it shall be capable of acquiring by deed, lease or other conveyance a fee simple or in any less estate in lands, tenements or easements in the same, and conveying any such estate or interest by deed, lease or other conveyance, and of holding such estate or interest, or any other estate necessary for the use of the said railroad, either real, personal or mixed, and shall have and enjoy all the privileges, franchises and immunities incident to a corporation, and may do and perform all and singular the acts and matters which to any

corporation it shall lawfully appertain to do and perform for the well being of said corporation."

Section 2. Section eleven of said chapter is hereby amended so as to read as follows: "The persons named in the first section shall be the first directors, and unless sooner superseded by an election of directors at the first annual meeting of the company, shall hold their offices until the first Wednesday of May, A. D. 1871, and until others are chosen in their places; and in case of vacancy in the directors, by reason of the death or resignation of any director, or of his ceasing to be a stockholder, it may be filled by the remaining directors until the next annual election, or until some other person shall be elected to fill the same. The directors herein named may appoint three persons, who shall be stockholders, to be inspectors at the first election, after which the stockholders shall choose three such inspectors at the annual election. If no inspectors are chosen, the directors may appoint three from time to time. If at any time an election of directors shall not take place on the day appointed by this act, the corporation shall not for that cause be dissolved, but an election may be held on another day, in such manner as shall be prescribed by the directors, or provided for by the by-laws."

Section 3. This act shall take effect and be in force from and after its passage.

William E. Smith,
Speaker of the Assembly.

Thad. C. Pound,
President of the Senate.

Apprived January 20, 1871.

Lucius Fairchild,
Governor.

AN ACT

To amend Section 2, Chapter 326 of the private and local laws of 1870, approved March 15, 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company."

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

Section 1. Section two of said act is hereby amended so as to read as follows: Section 2. The company by this act created are hereby authorized and empowered to survey, locate and from time to time alter, change and relocate, (so as not materially to change the route,) and to construct and complete, perpetually to have, use and enjoy, maintain and operate the said railroad with one or more tracks or lines, over and along the following routes, that is to say: beginning at some convenient point on the west shore of the Bay of Superior, or on the south shore of the Bay of St. Louis, in the County of Douglas, running thence southerly by a route as direct as may be practicable, through the counties of Douglas, Burnett, Polk, St. Croix and Pierce via St. Croix Falls and Hudson to Prescott, with a branch or extension running westerly from the above designated place of beginning, in Douglas County, to such a point on the Minnesota boundary, north of Nemadji River, as may be deemed desirable by the directors of said railroad company; provided, said company shall have the right to construct this line of road along the westerly shore of the Bay of Superior, from the extreme end of Connor's Point to the southerly end of said bay, or such point thereof as may be deemed desirable by the directors of said company, and shall have the authority to construct and maintain a bridge across the St. Louis River at any point at or above

Connor's Point in said County of Douglas, whenever the same shall be assented to by resolution of the Board of Supervisors of the town of Superior.

Section 2. This act shall be in force after its passage and publication.

W. E. SMITH,
Speaker of the Assembly.

THAD. C. POUND,
President of the Senate.

Approved March 16, 1871.

LUCIUS FAIRCHILD,
Governor.

AN ACT.

To amend Chapter 326 of the private and local laws of 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company", and Chapter 328 of the private and local laws of 1871, entitled "An act to amend Section 2, Chapter 326, of the private and local laws of 1870, approved March 15, 1870, entitled "An act to incorporate the Superior and St. Croix railroad Company."

The People of the State of Wisconsin represented in Senate and Assembly do enact as follows:

Section 1. Section 2 of Chapter 326 of the private and local laws of 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company," as amended by Chapter 328 of the private and local laws of 1871, entitled "An act to amend Section 2, Chapter 326, of the private and local laws of 1870," approved March 15, 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company," is hereby amended so as to read as follows:

Section 2. The said company is hereby authorized and empowered to survey, locate and construct, and to acquire, by purchase or otherwise, and to equip, maintain, operate and perpetually to have, use and enjoy, a railroad or railroads, withone or more tracks from a point or points on the Bay of Superior, at the west end of Lake Superior, in Douglas County, Wisconsin, to be selected by the board of directors, upon such route or routes as such board shall adopt, to such point or points on the Minnesota state line as such board shall select, and thence westward, upon such route or routes as said board shall adopt, to such point or points on the Pacific coast as such board shall select; and from said point or points in Douglas County easterly, upon such route or routes as said board shall adopt to or near Ashland, in the county of Ashland, in the State of Wisconsin, and thence by such route or routes and to such point or points in the State of Michigan as such board shall select; also from said point or points in Douglas county, upon such route or routes as said board shall adopt, through the counties of Douglas, Burnett, Polk, St. Croix and Pierce, or any of them, to Prescott, on the Mississippi river, with a branch from some point in one of said counties to be selected by the board of directors, to St. Paul and Minneapolis, Minnesota, or to either of said places; also from said point or points in said Douglas county or from some point to be selected by such board on any railroad or railroads which the said company is or hereafter may be authorized to construct or otherwise acquire, upon such route or routes as such board shall adopt, through the states of Wisconsin and Illinois to or into the city of Chicago in the County of Cook, in said last named state. And the said company is further authorized and empowered to survey, locate, construct, and to acquire by purchase or otherwise, and to equip, maintain and operate, and perpetually to have, use, possess and enjoy, branch lines of railroad from its main line or lines in and into or through any state or territory of the United States, or extending into or lying within the Dominion of Canada, or any portion or province thereof, from and to such points as shall be determined by such board of directors.

Section 2. Section 3 of said Chapter 326 is hereby amended so as to read as follows: Section 3. The said company shall have the perpetual right, power and authority to transport, take and carry property and persons upon such railroad or railroads, by steam and other motive power, and to receive and store any property in any of its depots or other buildings, including elevators, and to make, construct, maintain, acquire, and use all such switches, turnouts, side tracks, spur and other tracks as it shall deem necessary; and also to construct, erect, acquire and maintain all such depots, station houses, warehouses, car houses, shops, engine houses, elevators and other buildings, fixtures, structures and things necessary or convenient for use by said company in the operation of its railroad road and in the transaction of its business as a carrier of freight and passengers. And said company shall have power to connect its railroad or railroads with any other railroad or railroads, and to operate the same under a lease or otherwise, or to run in connection with any such railroad or railroads, in such manner as may be agreed upon between the board of directors of said company and the board of directors of the company or companies owning or operating any such connecting railroad or railroads. And any railroad company, person, association or corporation having a railroad or railroads, constructed or partly constructed running in the direction of the line or lines of railroad which the said company is by this act or may hereafter be authorized to construct, acquire and operate, which said company shall agree to use or connect with, is hereby authorized to make to said company, (created by said Chapter 326), a lease, sale or trackage arrangement, perpetual or for a time limited, of the whole or any part of the said railroad or railroads so constructed or partly constructed, together with the rolling stock, machinery, buildings, tennements or fixtures, and all property, real, personal or mixed, of the said railroad company, person, association or corporation, together with its or their franchises, rights, privileges and immunities, and in consideration of such lease, use or sale, to take or receive such rent, commutation of rental, payment or other consideration as may be agreed upon.

Section 3. Section 4 of said Chapter 326 is hereby amended so as to read as follows: Section 4. Said company shall have the right, authority and power, and it is hereby authorized and empowered subject to the provisions of section 1836 of the revised statutes, to construct, maintain and operate its railroad or railroads across, along or upon any stream of water, watercourse, street, highway, plank road, turnpike or canal which its route or routes shall intersect or touch; to carry any highway, street, turnpike or plank road which it shall touch, intersect or cross over or under its tracks, as may be most expedient for the public good; to change the course and direction of any highway, street, turnpike or plank road, when made necessary or desirable to secure more easy ascent or descent by reason of any embankment or cut made in the construction of its railroad or railroads, and to take land necessary therefor, provided such highway or road be not so changed from its original course more than six rods, nor its distance thereby lengthened more than five rods. And the said company shall also have power, and it is hereby empowered, to cross, intersect, join and unite its railroad or railroads with any railroad now or hereafter constructed on any point on its route, and upon the grounds of such railroad corporation with the necessary turnouts, sidings and switches and other conveniences, in furtherance of the objects of its connection. And the said company shall also have power, and it is hereby empowered, to erect, purchase and maintain all necessary bridges for the use of its railroad or railroads, main and branch, over any stream of water, or watercourse, at such point or points of crossing the same as said railroad or railroads may be located or constructed, together with all necessary abutments, piers, arches, foundations and other structures.

Section 4. Section 5 of said Chapter 326 is hereby amended so as to read as follows: Section 5. It shall be lawful for the said company, and it is hereby authorized and empowered, by its officers, engineers, servants and workmen to enter upon any land or lands for the purpose of exploring, surveying, locating and establishing the route or routes of said railroad or railroads; and when the said route or routes or any portion thereof shall be determined by resolution adopted by its board of directors it shall be lawful for said company, and it is expressly authorized and empowered, to purchase and hold such land or lands for right-of-way, side-tracks, spur-tracks, watertanks, construction of road bed and maintainance of same, station houses, warehouses, elevators, engine houses, shops, and for such other purposes as may be necessary, usual or convenient for the operation of said railroad or railroads or in connection therewith; and whenever said company cannot agree with the owners and other parties interested in any such land upon the price to be paid therefor, or for the occupation thereof or for any interest therein, it shall have the right, and it is hereby expressly authorized and empowered, to acquire the same by condemnation proceedings, to the extent and in the manner provided by Sections 1845 to 1856 inclusive of the revised statutes of 1878.

Section 5. Section 6 of said Chapter 226 is hereby amended so as to read as follows: Section 6. Upon the completion or acquisition of said railroad or railroads, or any part thereof, it shall be lawful for said company, and it is hereby authorized and empowered to demand, collect and receive such sum or sums of money for the transportation of persons and property, and for the storage of property as shall be reasonable.

Section 6. Section 7 of said Chapter 226 is hereby amended so as to read as follows: Section 7. Said company shall also have full power, and it is hereby expressly authorized, to carry and transport persons and property in boats, steamships, vessels, barges and other water craft upon any of the navigable waters which its railroad or railroads shall run to, over or connect with, and to demand, receive and collect such compensation for the same as it shall from time to time deem reasonable, and for that purpose the said company is authorized and empowered to build, lease, purchase, own and use, either directly or through a corporation or corporations organized by it or otherwise for the purpose, and whose stock in whole or in part it shall own, such boats, steamships, vessels, barges and other water craft as in its judgment may be necessary or convenient for its use.

Section 7. Section 8 of said Chapter 326 is hereby amended so as to read as follows: Section 8. The said company shall be capable in law of taking, holding and selling any lands granted to it or to any company whose property it shall acquire by the purchase or otherwise, by the government of the United States, or by this state, or by any state or territory through or in which it shall acquire in any manner and operate any railroad or railroads wherever the said lands may be situated, or by grant by persons, companies, corporations or associations, within or without this state, to aid in the construction or operation of any railroad or railroads by it constructed or otherwise acquired, or authorized to be by it constructed or acquired, and the said company may also pledge, hypothicate, mortgage or otherwise dispose of all its right, title and interest in and to said lands, or any part thereof, and in and to any other estate, real, personal or mixed of which it, the said company, may be seized at the time of the execution of any mortgage or deed of trust, or of which it may become seized subsequent to the execution and delivery of any such instrument or instruments, including its franchise to be a corporation and to own, maintain and operate such railroad or railroads; and the said company may sell or lease any of its branch roads however acquired, whenever it shall be declared by resolution of the board of directors, subject to the approval of the holders of record of a majority of the outstanding capital stock, that the interests of the company and its stockholders will be thereby subserved.

Section 8. Section 9 of said Chapter 326 is hereby amended so as to read as follows: Section 9. All of the affairs of said company shall be managed by a board of directors who shall be stockholders, and who are hereby invested with all the powers of the corporation save as hereinafter provided. They shall be chosen annually by ballot by the stockholders at the annual meeting of the company, which shall be held on such notice and at such time, as shall be prescribed by the by-laws, and at such place, within or without the state, as shall be prescribed by the board of directors, and stated in such notice. At all meetings of the stockholders each stockholder shall be entitled to one vote for each share of stock held by him under such conditions and regulations as may be prescribed or referred to in the certificates thereof and may vote the same in person or by proxy duly authorized, and no business shall be transacted at any meeting of the stockholders unless a majority of the stock subscribed and outstanding is represented and outstanding. In all elections of directors those stockholders having the greatest number of votes shall be deemed and declared duly elected. Elections shall be conducted in such manner as shall be prescribed by the by-laws of the company, and if for any cause an election of directors shall not be had at the time when by the provisions of this act or by the by-laws it should be had, the same may be held at any other time, on notice to be given as aforesaid, and until such election be had the directors of the preceeding year shall continue to act, until their successors are duly elected and qualified. The company may at any time increase or diminish the number of directors to be elected at the next annual meeting of the stockholders, and the number to be elected shall be specified in the notice of meeting, but shall never be less than five nor more than seventeen; and the said company may by a vote of the majority of the stockholders, present or represented at any annual meeting, classify its directors into three classes, each of which shall be composed as nearly as may be of one-third of the directors, the term of office of the first class to expire in one year, of the second in two years, and of the third in three years. At each annual election thereafter a number of directors shall be elected for three years equal to the number whose term of office shall then expire. All vacancies shall be filled in accordance with the by-laws.

Section 9. Section 10 of said Chapter 326 is hereby amended so as to read as follows: Section 10. A majority of the board of directors shall constitute a quorum for the transaction of business. They shall meet at such times and be convened in such manner as the by-laws shall prescribe, and at such places as the board shall decide upon. Whenever all the members of the board of directors are present at any meeting it shall be competent for them, having signed upon the minutes a waiver of notice of meeting, to transact business as fully to all intents and purposes as if the said meeting had been duly convened pursuant to notice. They shall elect one of their own number to be president, ane one to be vice-president, and they may elect additional vice-presidents and such other officers of the board, and impose upon them such duties, and confer upon them such powers as the board may by resolution prescribe. The duties of the president and other officers at meetings of the board and stockholders shall be prescribed by the by-laws. The board of directors shall have power to appoint an executive committee, and to confer upon and to delegate to said committee the full power of the board of directors when the latter is not in session; and the board may appoint a secretary, treasurer, comptroller and such other officers and agents as it may deem necessary, and it may remove them at pleasure, prescribe their duties and compensation, and demand adeqùate security for the discharge of their respective duties.

Section 10. Section 11 of said Chapter 326 is hereby amended so as to read as follows: Section 11. The capital stock of said company may be increased from time to time to such an amount as may by its stockholders be deemed necessary for the construction, acquisition or operation of any of its railroad or railroads, by a vote of the owners of record of at least a majority of all its outstanding stock, in person or by proxy, at any annual meeting, or at any meeting called for that purpose, by a notice in writing to each stockholder, to be served upon him personally, or by depositing the same in the postoffice, postage paid, properly directed to him at the postoffice nearest his usual place of residence, at least twenty days prior to such meeting, such notice shall state the time and place of such meeting, its object, and the amount to which it is proposed to increase such capital stock. No vote in favor of such increase shall take effect until the proceedings of such meeting, showing the names of the stockholders voting therefor, and the amount of stock owned by each, shall be entered upon the records of said corporation, and the said company may at any time, by a vote of the holders of record of two-thirds of said outstanding stock, classify its said stock into common and preferred; and it may further classify its said stock by dividing its preferred into different classes, and it may make any or all of said classes of preferred stock cumulative or non-cumulative as to dividends thereon, and any or all of said preferred stocks may be with or without preference over any other stock or classes of stock in the event of the liquidation of the company's affairs, either through insolvency or otherwise. And the said company may make such preferred stock convertible into common stock upon such terms and conditions as may be fixed by the board of directors.

Section 11. Section 12 of said Chapter 326 is hereby amended so as to read as follows: Section 12. The said company is hereby expressly authorized to borrow from time to time such sums of money, and upon such terms, as the corporation or board of directors shall agree upon or authorize as necessary and expedient; and in its corporate name to execute and deliver its notes, bonds, debentures or other evidences of indebtedness, in such forms as shall be from time to time prescribed by the board of directors, and in such amount as shall be deemed from time to time by said board, expedient; and may make the same convertible into its capital stock of any class upon such terms and conditions as to the board of directors may seem advisable, and it may pledge or hypothecate such notes, bonds, debentures or other evidences of indebtedness as collateral security for loans made to it by any person or persons, corporation, association or body politic; and it may sell such notes, bonds, debentures, or other evidences of indebtedness, at such prices and upon such terms as the board of directors shall prescribe; and it may deliver the same in discharge of any liabilities which it may have incurred or proposes to incur, in the construction, purchase or other acquisition of any railroad or railroads or other property which it is or may hereafter be by law authorized to construct, purchase or acquire, and in the repair, equipment or operation of its railroad or railroads, main line or branch, or of any part or parts thereof, or of any steamships, steamboats, barges, ferries or other water craft acquired or owned by it, or which it desires to acquire by construction or purchase; and it may exchange the same for the stocks, bonds or other evidences of indebtedness of any railroad company whose railroad or railroads it is or may hereafter be authorized to purchase and it may generally use the same in such manner as shall in the judgment of the board of directors subserve and promote the corporate purposes; and the powers of said company for the purposes aforesaid, and for all purposes necessary for the carrying out of the objects, or any thereof, of said company are hereby ratified and confirmed; and the said company may, and it is hereby expressly authorized and empowered, in order to secure the payment of any such notes, bonds, debentures or other evideences of indebtedness, execute and deliver from time to time collateral trust, indentures, or other security agreements or indentures, and it may from time to time execute and deliver trust deeds, or mortgages or both, as occasion may require of and upon any of its railroad or railroads, or parts thereof, constructed or thereafter to be constructed or in process of construction and may by any such mortgage or trust deed convey and mortgage all or any of its railroad track or tracks, rights of way, depot grounds, rights, privileges, franchises, immunities, exemptions, machine houses, rolling stock, furniture, tools, bridges, elevators, steamboats, steamships, and all appendages and appurtenances and all other property, real, personal and mixed, in any manner whatever then belonging to the corporation or which it may thereafter acquire; and it may include in any such mortgage or trust deed any grant or grants of land, or any parts thereof, owned or held by it, or in which it may be or may become interested; and it may also grant, convey and transfer by any such mortgage or deed of trust its franchise to be a corporation and its franchise to have, possess, maintain and operate the railroad or railroads and other property described in any such instrument uncovered thereby; and it may also give and grant to individual bond holders the right and power to vote at meetings of stockholders upon all such questions other than election of directors as may come before such meetings; and every such mortgage, deed of trust, collateral trust, indenture or security agreement to be executed by said company shall be in such form, and contain such provisions, as the corporation or board of directors shall think proper. And in any such mortgage, deed of trust, collateral trust indenture or security agreement there may be inserted provisions limiting the right of individual holders of the bonds, notes or evidences of indebtedness secured thereby to sue or recover upon any such bonds, notes or other evidences of indebtedness, or upon any coupon annexed thereto secured by said instrument either at law or in equity, except through the trustee or trustees to whom or to which or with whom or with which such instrument is made, and every such provision shall be binding upon the holders of said bonds, notes or other evidences of indebtedness, and all thereof, and upon any court whose jurisdiction and aid may be invoked in foreclosing the lien or liens created thereby. And every such mortgage or mortgages, deed or deeds of trust or collateral trust indenture and every discharge or satisfaction thereof, may be recorded in the office of the secretary of state in a proper book kept for that purpose, and the certificate of such recording endorsed on such instrument, shall have the same effect as if such instrument were recorded in the several counties in which such railroad or railroads may be located and such record in the office of the secretary of state shall be sufficient notice to all persons of the existence and lien created by said instrument, and of the property covered by the same.

Section 12. The said company may lease or purchase, and take a conveyance or assignment of the railroad or railroads franchises, immunities, and all other properties and appurtenances and the stocks or bonds, or both thereof, of any other railroad corporation, or any portion thereof within or without this state, when their respective railroads can be lawfully connected and operated together to constitute a continuous line, or when the railroad or railroads so leased or purchased will constitute branches or feeders of any railroad or railroads maintained and operated by such leasing or purchasing company; and the said company may purchase and hold the stock and bonds, or either thereof, of any railway company to which it has furnished the money for the construction of its railway, or may purchase for the money so furnished, or for such other consideration as may be agreed upon between the companies by their respective boards of directors, and take a conveyance of the whole or any portion of the franchises of said corporation, and of the railway property and appurtenances.

Section 13. And the said company may and it is hereby expressly authorized and empowered to, purchase or otherwise acquire and hold the stock or bonds or both thereof of any corporation (wherever organized) the franchises, functions or operations of which may or would in any wise be utilized for the convenient or more economical or safe operation of its railroad or railroads, or of any thereof; and the said company may guarantee the principal or interest or both thereof, of the bonds, or may endorse the same, or may guarantee the dividends upon the stock or the rentals or obligations of any lease or traffic contract of any corporation which it may control by virtue of the ownership of its stock or otherwise, and may endorse the notes of any such company, or other evidences of indebtedness of any such company, and may guarantee by endorsement or otherwise, the bonds or other evidences of indebtedness, and the dividends upon the stock, or the rentals or obligations of any lease or traffic contract, of any corporation or corporations whose property the said company may now or hereafter be authorized by law to acquire by purchase or lease of the physical property thereof, or by purchase of the stock thereof.

Section 14. The said company shall, in addition to the special powers conferred upon it by said Chapter 326 and by this act, have, possess and enjoy all of the rights, powers, privileges and immunities conferred upon railroad corporations by Chapter 87 of the revised statutes of 1878, and the acts amendatory thereof and supplementary thereto, and shall be subject, save where inconsistent herewith, to the restrictions, duties and liabilities imposed upon railroad corporations by said chapter and all amendatory and supplementary acts.

Section 15. Sections 13, 14, 15, 16, 17, 18 and 19 of said Chapter 326 are hereby repealed.

Section 16. All acts and parts of acts inconsistent with or in any manner contravening the provisions of this act are hereby repealed.

Section 17. This act shall take effect and be in force from and after its passage and publication.

T. D. WEEKS,
President of the Senate.

GEO. W. BURROWS,
Speaker of the Assembly.

Approved April 15, 1895.

W. H. UPHAM,
Governor.

At a meeting of the stockholders of the Superior and St. Croix Railroad Company, held at the office of John C. Spooner, in the City of Madison, State of Wisconsin, on the 8th day of October, 1895, at ten o'clock A. M., pursuant to adjournment, all of the stockholders being present in person and by proxy, the following resolutions were duly and unanimously adopted, by a stock vote, to-wit:

Resolved, that the action of Hiram Hayes, secretary, in applying for and procuring the amendment to the charter of the company made by Chapter 244 of the laws of 1895, entitled "An act to amend Chapter 326 of the private and local laws of 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company," and Chapter 328 of the private and local laws of 1871, entitled "An act to amend Section 2, Chapter 326, of the private and local laws of 1870, approved March 15th, 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company," be, and the same is hereby, ratified and approved.

Resolved, further, that this company does hereby accept the said chapter, and each and every part thereof.

Resolved, that the president and secretary of the company be, and they are hereby, authorized and instructed to execute on behalf of the company, and under its corporate seal, and to file with the secretary of state, a certified copy of the foregoing resolution accepting said chapter 244 and the amendments to the charter therein and thereby made.

State, County and City of New York—ss.

We, EDWARD D. ADAMS, President, and GEORGE H. GARDINER, Secretary of the Superior and St. Croix Railroad Company, a corporation organized and existing under the laws of the State of Wisconsin, do hereby jointly and severally certify that we have compared the foregoing with the originals thereof as they appear upon the records of the company, and that the same are true and correct copies of said originals, and of the whole thereof, and that the same were adopted at a meeting of the stockholders of said company duly held as in the caption hereof stated and set forth.

In Witness Whereof, we have hereunto, pursuant to the instructions of the stockholders, as aforesaid, set our hands, and caused the common corporate seal of the company to be hereto affixed.

EDWARD D. ADAMS,
President.

GEORGE H. GARDINER,
(SEAL.) Secretary.

STATE OF WISCONSIN,
Department of State—ss.

Received this 10th day of July, A. D. 1896, and recorded in Vol. 8 of R. R. Inc. & Res. on page 625.

G. E. VANDERCOOK,
Assistant Secretary of State.

At a meeting of the stockholders of the Superior and St. Croix Railroad Company, duly held at the office of Spooner, Sanborn, Kerr & Spooner, in the city of Madison, State of Wisconsin, on the 1st day of July, A. D. 1896, at two o'clock P. M., all of the holders of record of the capital stock of said company being duly represented at said meeting, the following, among other proceedings, were duly had, to-wit:

On motion of Mr. Spooner, seconded by Mr. Reed, the following resolution was, by a stock vote, unanimously adopted, every share of the outstanding stock of said company voting therefor, to-wit:

Resolved, that the corporate name of this corporation be, and the same is hereby, changed from "THE SUPERIOR AND ST. CROIX RAILROAD COMPANY" to "NORTHERN PACIFIC RAILWAY COMPANY", which latter name is hereby adopted as the corporate name of this corporation.

State, County and City of New York—ss.

I, GEORGE H. GARDINER, Secretary of the SUPERIOR AND ST. CROIX RAILROAD COMPANY, and the custodian of its books, records and common corporate seal, do hereby certify that I have compared the above and foregoing with the original resolution, and with the record of its adoption above set forth, and that the same is a true and correct copy of the said resolution, and of the whole thereof, and of the record of the adoption thereof at the meeting of the Stockholders of said Company duly held as in the caption hereof set forth.

In Witness Whereof, I have, pursuant to the order of the stockholders in this behalf duly made, hereunto set my hands and affixed the said corporate seal this eighth day of July, A. D. 1896.

George H. Gardiner,
Secretary, Superior and St.
(Seal) Croix Railroad Company.

STATE OF WISCONSIN,
Department of State—ss.

Received this 10th day of July and recorded in Vol. 8 of R. R. Inc. & Res. on page 624.

G. E. Vandercook,
Assistant Secretary of State.

UNITED STATES OF AMERICA,

The State of Wisconsin, Department of State.

To All to Whom these Presents shall Come,

I, W. L. Houser, Secretary of State of the State of Wisconsin and Keeper of the Great Seal thereof, do hereby certify that the annexed copy of

AN ACT

To incorporate the Superior and St. Croix Railroad Company and Amendments thereto, including one changing name of company to Northern Pacific Railway Company, have been compared by me with the enrolled acts and resolutions on file in this Department, and that the same is a true copy thereof, and of the whole of such acts and resolutions.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State at the Capitol, in the City of Madison, this 13th day of July, A. D. 1903.

W. L. HOUSER,

(SEAL) *Secretary of State.*

APPENDIX B.

An Act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's Sound, on the Pacific Coast, by the Northern Route.

Sec. 10. And be it further enacted, That all people of the United States shall have the right to subscribe to the stock of the Northern Pacific Railroad Company until the whole capital named in this act of incorporation is taken up, by complying with the terms of subscription; and no mortgage or construction bonds shall ever be issued by said company on said road, or mortgage, or lien made in any way, except by the consent of the Congress of the United States.

APPENDIX C.

A Resolution authorizing the Northern Pacific Railroad Company to issue its Bonds for the construction of its road and to secure the same by mortgage, and for other purposes.

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, that the Northern Pacific Railroad Company be, and hereby is, authorized to issue its bonds to aid in the construction and equipment of its road, and to secure the same by mortgage on its property and rights of property of all kinds and descriptions, real, personal, and mixed, including its franchise as a corporation; and, as proof and notice of its legal execution and effectual delivery, said mortgage shall be filed and recorded in the office of the Secretary of the Interior; and also to locate and construct, under the provisions and with the privileges, grants, and duties provided for in its act of incorporation, its main road to some point on Puget Sound, via the valley of the Columbia river, with the right to locate and construct its branch from some convenient point on its main trunk across the Cascade Mountains to Puget Sound; and in the event of there not being in any state or territory in which said main line or branch may be located, at the time of the final location thereof, the amount of lands per mile granted by Congress to said company, within the limits prescribed by its charter, then said company shall be entitled, under the directions of the Secretary of the Interior, to receive so many sections of land belonging to the United States, and designated by odd numbers, in such state or territory, within ten miles on each side of said road, beyond the limits prescribed in said charter, as will make up such deficiency, on said main line or branch, except mineral and other lands as excepted in the charter of said company of eighteen hundred and sixty-four, to the amount of the lands that have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of subsequent to the passage of the act of July two, eighteen hundred and sixty-four. And that twenty-five miles of said main line between its western terminus and the City of Portland, in the State of Oregon, shall be completed by the first day of January anno domini eighteen hundred and seventy-two, and forty miles of the remaining portion thereof each year thereafter, until the whole shall be completed between said points; Provided, that all lands hereby granted to said company which shall not be sold or disposed of or remain subject to the mortgage by this act authorized, at the expiration of five years after the completion of the entire road, shall be subject to settlement and pre-emption like other lands, at a price to be paid to said company not exceeding two dollars and fifty cents per acre; and if the mortgage hereby authorized shall at any time be enforced by foreclosure or other legal proceedings, or the mortgaged lands hereby granted, or any of them, be sold by the trustees to whom such mortgage may be executed, either at its maturity or for any failure or default of said company under the terms thereof, such lands shall be sold at public sale, at places within the states and territories in which they shall be situate, after not less than sixty days previous notice, in single sections or sub-divisions thereof, to the highest and best bidder; Provided, further, That in the construction of the said railroad, American iron or steel only shall be used, the same to be manufactured from American ores exclusively.

Sec. 2. And be it further resolved, That Congress may at any time alter or amend this joint resolution, having due regard to the rights of said company, and any other parties.

Approved, May 31, 1870.

SUPREME COURT
OF THE UNITED STATES.

OCTOBER TERM A. D. 1903.

No. 89.

JOHN A. HUMBIRD AND
FREDERICK WEYERHAEUSER,
APPELLANTS,
AGAINST
WALDO A. AVERY, ET AL.,
RESPONDENTS,
THE UNITED STATES,
INTERVENOR.

CERTIFICATION FROM UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Brief on Behalf of Appellee Lesure Lumber Company.

The land involved in this controversy claimed by the defendant Lesure Lumber Company· is within the first indemnity limits of the Northern Pacific Railroad Company.

On the 26th day of May, 1864, these with other lands were withdrawn by the Commissioner of the General Land Office, on the approval of the Secretary of the Interior, from pre-emption, settlement and sale, for the benefit of the Lake Superior & Mississippi Railroad Company under the grant for that road of May 5, 1864. This act (13 Sta. at L. 64) is as follows:

> Section 1—"That there be, and there is hereby, granted to the State of Minnesota for the purpose of aiding in the construction of a railroad in said state from the city of Saint Paul to the head of Lake Superior, every alternate section of public land of the United States, not mineral, designated by odd numbers, to the amount of five alternate sections per mile on each side of said railroad on the line thereof, within the State of Minnesota; but in case it shall appear that the United States have, when the line or route of said road is definitely fixed, sold, appropriated, reserved, or otherwise disposed of any sections or any part thereof, granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, then it shall be the duty of the Secretary of the Interior to select from the lands of the United States nearest the lines of sections above specified, in alternate sections or parts thereof, so much public land of the United States, not mineral, as shall be equal in amount to such land as the United States have sold or otherwise appropriated, or to which the rights of pre-emption or homestead settlement may have attached, as aforesaid; which lands thus selected in lieu of those sold, reserved, or otherwise appropriated or disposed of, or to which the rights of pre-emption or homestead settlement may have attached, as aforesaid, together with the sections and parts of sections designated as aforesaid, and appropriated as aforesaid, shall be held and disposed of by the said state for the use and purpose aforesaid; Provided, that the land to be selected shall in no case

be located further than twenty miles from the lines of said road."

By this act of May 5, 1864, (13 Stat. at L. 64) Congress made a land grant to the State of Minnesota for the purpose of aiding in the construction of a railroad in said state, from the city of St. Paul to Lake Superior.

This grant was for the amount of five alternate sections per mile, on each side of said railroad with a provision for indemnity for losses within the grant in place to be taken within an adjacent territory not more than twenty miles from the road line within said state. The Lake Superior and Mississippi R. R. Co. became the grantees of the State of Minnesota under that act, and had constructed the road in aid of which the grant was made prior to the filing by the Northern Pacific Company of its map of definite location.

After the location of the general route of the Lake Superior & Mississippi Railroad as hereinafter set forth, it appearing, the grant being confined to the State of Minnesota and by reason of the proximity of the road to the state boundary, the amount of land intended to be granted could not be found within the limits described therein, Congress by act of July 13, 1864, (14 Sta. at L., 93) gave the Lake Superior Company the right to select within thirty miles of the railroad line on the west side of its road to make up any deficiency that might be found to exist.

The limit of the Lake Superior & Mississippi Railroad grant, therefore, was a ten mile primary limit and a thirty mile indemnity limit.

The map of the general route of the L. S. & M. R.

R. Co. was filed in the General Land Office of the United States on the 7th day of May, 1864, (See Ex. "69", pp. 568-570 Record) and on the 26th day of May, 1864, the Commissioner of the General Land Office made the following withdrawal order:

> Register & Receiver,
> Duluth, Minn.
> Gentlemen:
>
> By the Act approved May 5, 1864, a grant of lands was made to the State of Minnesota to aid in the construction of a railroad from St. Paul to Lake Superior. The Secretary of the Interior having approved of a withdrawal of lands for said road, you will suspend from preemption, settlement and sale a body of land about twenty miles in width as indicated on the enclosed diagram "A", marked Superior and Mississippi Railroad.
>
> Acknowledge the date of receipt of this.
>
> Very respectfully,
> Your Obdt Sevt.,
> J. M. EDMONDS,
> Commissioner.

The map referred to, Exhibit "71", (Record p. 577) in the letter of the Commissioner was filed in the office of the Commissioner of the General Land Office May 7, 1864. It showed that the lands withdrawn commenced at T. 41 N., R. 22 W., and went eastwardly to T. 52 N., R. 12 W., the withdrawal being of twenty miles on each side of the proposed line, as designated on the diagram accompanying the letter of withdrawal.

The lands involved in this controversy claimed by the Lesure Lumber Company, are within six miles of the line of road of the L. S. & M. R. R. Co. as shown on the map, Ex. "71", exhibiting the lands withdrawn under the order of the Commissioner of the General Land Office aforesaid.

The grant of May 5th, 1864, authorizing the withdrawal of the land granted, including the lands within the indemnity limits of the L. S. & M. R. R., was passed nearly two months prior to the grant to the Northern Pacific Railroad Co., and the order of withdrawal (May 26th, 1864), was made more than one month prior to the date of the Northern Pacific grant.

Was the withdrawal of the lands under the order of May 25th, 1864, [redacted] *authorized?*

In *Hewitt vs. Schlitz*, 180 U. S., 473 L. Ed., Justice Brewer [redacted] in his dissenting opinion speaks as follows:

> "From the beginning of land grants the Land Department has exercised the power of withdrawing from pre-emption and homestead entry any body of lands which in its judgment might be necessary for the satisfaction of the grant. And the existence of this power has been affirmed by this court in many cases, and without a single exception up to the present decision. The grant for the improvement of the Des Moines river terminated, as finally decided, at the Raccoon Fork of that river about half way between the northern and southern boundary of the state of Iowa; yet a withdrawal of lands along that river, above that fork, and up to the northern boundary of the state, was sustained. Wolcott vs. Des Moines Nav. & R. Co., 5 Wall., 681, 18 L. ed. 689; Wolsey vs. Chapman, 101 U. S., 755; 25 L. ed. 915. It was held that as the extent of the grant was doubtful it was within the power of the land department, and also proper for it, to withdraw from settlement and sale all lands

> that might under any construction of the grant be needed to satisfy it. See, among other cases sustaining this power of withdrawal: Homestead Co. vs. Valley R. Co., 17 Wall. 153, sub nom.; Iowa Homestead Co. vs. Des Moines Nav. & R. Co., 21 L. ed. 622; Williams vs. Baker, 17 Wall. 144, 21 L. ed. 561; Dubuque & S. C. R. Co. vs. Des Moines Valley R. Co., 109 U. S., 329, 332, 333, 27 L. ed. 952, 953, 3 Sup. Ct. Rep. 188; Bullard vs. Des Moines & Ft. D. R. Co., 122 U. S. 167, 170, 171, 176, 30 L. ed. 1123, 1124, 1126, 7 Sup. Ct. Rep. 1149; United States vs. Des Moines Nav. & R. Co., 142 U. S. 510, 528, 35 L. ed. 1099, 1102, 12, Sup. Ct. Rep. 308; Hamblin vs. Western Land Co., 147 U. S. 531, 536, 37 L. ed. 267, 271, 13 Sup. Ct. Rep., 353; Riley vs. Welles, 154 U. S., 578, and 19 L. ed. 648, 14 Sup. Ct. Rep. 1166; Wood vs. Beach, 156 U. S., 548, 39 L. ed. 528, 15 Sup. Ct. Rep. 410; Wisconsin C. R. Co. vs. Forsythe, 159 U. S., 46, 54, 57, 40 L. ed. 71, 74, 15 Sup. Ct. Rep. 1020; Spencer vs. McDougal, 159 U. S., 62, 64, 40 L. ed. 76, 77, 15 Sup. Ct. Rep. 1026; Northern Pacific R. Co. vs. Musser-Sauntry Land, Logging & Mfg. Co., 168 U. S. 604, 607, 42 L. ed. 596, 597, 18 Sup. Ct. Rep. 205.

In the case of *Barden vs. the Northern Pacific R. R. Co.*, 145 U. S., 535, L. ed., at p. 811, the Court said:

> "Not only does the land once reserved not fall under the grant should the reservation afterwards from any cause be removed, but it does not then become a source of indemnity for deficiencies in the place limits. Such deficiencies can only be supplied from lands within the limits designated by the granting act or other law of Congress."

In *Spencer vs. McDougal*, 159 U. S., 62 (40 L. 76

at 77) speaking of the authority to make the withdrawal questioned in that case:

> "The only objection which can be made to the order of June 12, 1856, (under withdrawing the lands) which was after the passage of the act, is that the Commissioner withdrew too much land, to-wit: All land in the district, but that was a matter for the determination of the land department, and cannot be revised or disregarded by the courts."

From Wolcott vs. Des Moines Navigation & Railroad Company, 5 Wall. 681 (18 L. ed. 689 at 691), I quote the following:

> "The words of the proviso point almost directly to this grant, and to the dispute arising out of it among the public authorities. 'All lands heretofore reserved,' by any 'Act of Congress, or in any other manner by competent authority, for the purpose of aiding in any objects of internal improvements,' etc. These improvements of the Des Moines River were then in progress. Now, if it had turned out that the true construction of the act carried the grant above the Raccoon Fork, then the lands would have been reserved by Act of Congress, and no further legislation necessary. But not satisfied with this, as if to provide for any result in respect to the title to them, if reserved in any other manner by competent authority, for the object of internal improvements, then the reserving clause should not operate to carry them under the new grant.
>
> "It has been argued that these lands had not been reserved by competent authority, and hence that the reservation was nugatory. As we have seen, they were reserved from sale for the special purpose of aiding in the improvement

> ment of the Des Moines River—first, by the Secretary of the Treasury, when the Land Department was under his supervision and control, and again by the Secretary of the Interior, after the establishment of this department, to which the duties were assigned, and afterwards continued by this department under instructions from the President and cabinet. Besides, if this power was not competent, which we think it was, ever since the establishment of the Land Department, and which has been exercised down to the present time, the grant of the 8th of August, 1846, carried along with it, by necessary implication, not only the power, but the duty, of the Land Office to reserve from sale the lands embraced in the grant. Otherwise its object might be utterly defeated. Hence, immediately upon a grant being made by Congress for any of these public purposes to a State, notice is given by the Commissioner of the Land Office to the registers and receivers to stop all sales, either public or by private entry. Such notice was given the same day the grant was made, in 1856, for the benefit of these railroads."

This case and Spencer vs. McDougal were affirmed in Northern Pacific R. R. Co vs. Musser-Sauntry L. L. & Mfg. Co., 168 U. S., 604. (42 L., 597).

In *Northern Pacific R. R. Co. vs. Rooney*, 30 L. D., 403, the Secretary said:

> "That portion of the line of the Northern Pacific Railroad opposite said base lands was definitely located November 20, 1871. If these lands were reserved at that time, they were equally reserved at the time of the passage of the Act of July 2, 1864. They remained in a continuous state of reservation from before the passage of that act until after

> the definite location of the line of railroad thereby aided. There was but one purpose in the reservation and that was to keep the lands embraced therein in a condition where they would be available for the satisfaction of the grant made by the Act of May 5, 1864. The withdrawal of May 26, 1864, was never revoked and even in the absence of the order of November 2, 1866, it would have continued to be effective as to these base lands. Instead of establishing a new or independent reservation, that order, as to these lands, merely gave affirmative evidence of the intention to recognize the original withdrawal as still effective."

There can be no question, this withdrawal was authorized, and the lands embraced therein, were severed from the mass of public lands from which the grant to the Northern Pacific R. R. Co. could alone be satisfied. The third section of the Act of July 2, 1864, says that whenever, prior to the definite location of the route of the road, and, of course, prior to the grant made, any of the lands which would otherwise fall within it have been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands are to be selected in lieu thereof under the direction of the Secretary of the Interior. There would, therefore, seem to be no question but that this withdrawal took these lands included therein from the operation of the subsequent grant to the Northern Pacific R. R. Co. Bullard vs. Des Moines & Fort Dodge R. R. Co., 122 U. S., (L. ed.) 1123-1126. See Bardon vs. Northern Pacifis R. R. Co. Supra, and cases there cited.

It is not material in this case whether the Act of May 5, 1864, authorizing a withdrawal of lands on the filing of the maps of general route of the L. S. & M. R. R. Co, or only after the map of the definite location of said road had been filed. The fact is that the grant under which the L. S. & M. R. R. Co. was organized was prior in time to the act by which the Northern Pacific R. R. Co. was created and before the passage of the act creating the Northern Pacific R. R. Co. The Lesure Lumber Co. and other lands covered by this controversy, had been withdrawn from sale or other disposition and the only question to be determined, is whether such lands were on July 2nd, 1864, public lands within the meaning of the granting act to the Northern Pacific Railroad Co.

The question is, not whether subsequent to the Act of May 5, 1864, Congress could have disposed of these lands but whether by the Act of July 2nd, 1864, Congress did so dispose of them.

The 3rd section of the Act, under which the Northern Pacific R. Co. was created, had the following limitations as to what lands should be included in said grant.

> "Whenever on the line thereof the United States have full title, not reserved, sold, or otherwise appropriated, and free from preemption, or other claims or rights at the time the line of said road is definitely fixed."

What is public land? It is such land as is open to sale, or other disposition under the general laws of the United States. If any claims or rights of others have attached such land does not fall within the designation of public land, and would not pass to the Northern Pacific R. Co. under its grant. Were these lands in controversy public lands on July 2, 1864?

In *Bardon vs. Northern Pacific R. Co.*, 145 U. S., 806-809 (L. Ed.), Justice Field, speaking for the court, says:

> "The grant is of alternate sections of public lands, and by public lands, as it has been long settled, is meant such land as is open to sale or other disposition under general laws. **All such lands to which any claims or rights of others have attached, does not fall within the designation of public land. The statute also says, that whenever, prior to the definite location of the route of the road, and of course prior to the grant made any of the lands which would otherwise fall within it have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands are to be selected in lieu thereof under the direction of the Secretary of the Interior."**

The complainants on previous hearing have asserted that a withdrawal, when based upon a mere location of general route, does not operate to except lands so withdrawn from the operation of subsequent congressional grants. That is not the question in the case, as we regard it, the Northern Pacific granting act declares that no lands shall pass except public lands to which the United States had full title not reserved, etc., at the date of the grant.

A grant by Congress without these exceptions would not be the same, if these limitations mean anything.

The complainants have on previous hearings of this case, admitted that if the withdrawal had been made subsequent to the definite location of the line of the L. S. & M. R. Co., which was on Sept. 25, 1866, and the filing had been prior to the passage of the Northern Pacific granting act, such reservation would have been effective and these lands would have been excepted from the grant of the Northern Pacific R. Co. Would this in fact make any difference? It has been held over and over again by the Supreme Court of the United States that the grant to these railroads is *in presenti*, that the grantee takes its title from the date of the grant, that until a map is filed showing the definite location of the road, the grant is only a float, but when such map is filed the land embraced within its limits, that is public land, becomes the property of the railroad, and its title to such land dates back to the date of the granting Act, and only such lands are conveyed to the railroad that at the date of the grant were public lands not reserved, etc.

In *St. Paul & Pacific R. Co. vs. Northern Pacific R. Co.*, 139 U. S., on this subject the Court says:

> "As seen by the terms of the 3rd Sec. of the Act the grant is one '*in presenti*,' that is, it purports to pass a present title to the lands designated by alternate sections. * * which implies that the property itself is passed, not any special or limited interest in it. * * * The words also import a transfer of a present title, not a promise to transfer one in the future. The route not being at the time determined, the grant was in the nature of a float, and the title did not attach to any specific section until they were capable of identification, but when once identified the

> title attached to the same as of the date of the grant, except as to such sections as were specifically reserved."

Affirmed in Nelson vs. Northern Pacific R. R. Co., Vol. 23, Supreme Court Reporter No. 8, p. 306.

In *United States vs. Southern Pacific R. Co.*, 146 U. S., 1101, (L. Ed.), the Court says:

> "The intent of Congress in all railroad land grants as has been understood and declared by this Court again and again, is that such grant shall operate at a fixed time, and shall take only such lands as are at that time public lands, and, therefore, grantable by Congress, and is never to be taken as a floating authority to appropriate all tracts within the specified limits, which at any subsequent time may become public lands.
>
> "In Kansas Pacific vs. Dunmeyer, 113 U. S., 629, it was held that where a homestead right had attached to a tract at the time of the definite location of a railway company's line, which homestead was afterwards abandoned, the tract was simply restored to the public domain and did not pass to the railroad company under its grant; that the grant only attached to lands which were the subject of grant at the time; and the company had no interest in the question as to what afterwards became of the tract which was not public land at the time its grant became final. * * * The right of the homestead having attached to the land it was excepted out of the grant as much as if in a deed it had been excluded from the conveyance by metes and bounds. The same doctrine was affirmed in Hastings & D. R. Co. vs. Whitney, 132 U. S., 363; Sioux City vs. Griffey, 143 U. S., 64; Bardon vs. Northern Pacific R. Co., 145 U. S., 806."

From these decisions, and others cited, we conclude that the land that passes to the railroads under these grants, must not only be public lands to which the United States has full title, not reserved, sold, or otherwise disposed of, but this must be its condition on the date of the Act granting the same. In the matter under consideration that date was July 2, 1864. If the title to these lands on that day was not thus conditioned they did not pass to the Northern Pacific R. Co., for no subsequent time could be considered.

Were these lands on July 2, 1864, public lands to which the United States had on that date full title? We have seen that on May 26, 1864, they were withdrawn from the sale or entry to aid in the construction of the L. S. & M. R., and that the company had before that date filed with the Commissioner its map of general route.

Counsel for complainants admit that there appears to be no limit to the power of the land department of the federal government to withdraw lands from sale, pre-emption or homestead entry. They have heretofore insisted, however, that its power vanishes when it attempts to apply it to lands granted to railroads.

This particular question, however, was decided in Wolcott vs. Des Moines Nav. & R. Co. *supra*, the court holding that the withdrawal was valid and that a subsequent railroad grant with the reservation clause the same as in the Northern Pacific act did not operate upon lands so withdrawn.

In *Northern Pacific R. Co. vs. Musser Sauntry Co.*, 168 U. S., 596, (L. Ed.), it appeared that the line of the road was definitely fixed September 20, 1858. In March, 1866, the land within the indemnity limits was, by the Secretary of the Interior withdrawn from sale. In 1883 the Northern Pacific R. Co. selected the lands in controversy in lieu of lands lost to it, in place limits; these selections were approved by the local officers July 30, 1870. The Northern Pacific R. Co. fixed the general route of its road, and filed maps thereof, and on August 13, 1870, a withdrawal of the land within twenty miles of this route was ordered in favor of the Northern Pacific R. Co.

Justice Brewer in speaking for the Court in this case, says:

> "But a single question is presented in this case, and that is, whether the withdrawal from sale by the land department in March, 1866, of lands within the indemnity limits of the grant of 1856 and 1864, excepted such lands from the operation of the grant to the plaintiff. It will be seen that the grant in aid of the defendant's railway company was prior in date to that to the plaintiff, and before the time of the filing of plaintiff's map of general route and definite location the lands were withdrawn for the benefit of the defendant. The grant to the plaintiff was only of lands to which the United States had 'full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is definitely fixed. The withdrawal of the Secretary in aid of the grant to the State of Wisconsin was valid, and operated to withdraw the odd numbered sections within its limits from disposal by the land officers of the government under the general land laws. The Act of the Secretary was in effect a reservation.'"

The Court then referred to a number of authorities to support its opinion, all of which are referred to in this brief, and continues as follows:

> "But beyond the significance of the word 'reserved,' alone, there are other words in the Act which, taken in connection with it, make it clear that these lands do not fall within the grant. 'Otherwise appropriated,' in one term of description, and evidently when the withdrawal was made in 1866 it was an appropriation of these lands as far as might be necessary for satisfying that particular grant. It is true that it was not a final appropriation of these lands as far as might be necessary for satisfying that particular grant. It is true that it was not a final appropriation, or an absolute passage of the title to the State, or to the railroad company, for that was contingent upon things thereafter to happen; first, the construction of the road, and, second, the necessity of resorting to those lands for supplying deficiencies in the lands in place; still it was an appropriation for the purpose of supplying any such deficiencies. Again in the description, are the words, 'free from preemption or other claims or rights.' Certainly, after this withdrawal, the Wisconsin company had the right, if its necessities required by reason of the failure of lands in place to come into the indemnity limits and select these lands. Can it be said that they were free from such right when the very purpose of the withdrawal was to make possible the exercise of the right? But the language is not simply 'free from rights,' but, 'free from claims,' and surely the defendant's railroad company had an existing claim. No one can read this entire description without being impressed with the fact that Congress meant that only such lands should pass to the Northern Pacific as were public lands in the fullest sense of the term and free from all reservations and ap-

> propriations and all rights or claims in behalf of any individual or corporation at the time of the definite location of its road. And such is the general rule in respect to railroad land grants."

The Court referred to the Leavenworth case, 92 U. S. 634, as furnishing an apt illustration of this subject, in which the Court used this language:

> "Every tract set apart for special uses is reserved to the Government, to enable it to enforce them. There is no difference in this respect, whether it be appropriated for Indian, or for other purposes."

In the present appeal the map of general route of the L. S. & M. R. R. Co. was filed May 7, 1864. The date of the withdrawal was May 26, 1864, and this order has never been revoked. The date of the filing of the map of definite location was September 25, 1866. All of these events took place long before even the Northern Pacific R. Co. filed its map of general route.

From the authorities I thing it appears, whether lands withdrawn from sale or pre-emption for the benefit of the railroad company, when based upon a mere location of general route, operates to exempt lands withdrawn from the operation of a subsequent grant, depends upon the terms of the subsequent grant.

If the subsequent grant is in terms like the grant to the Northern Pacific Railroad Company, the withdrawal does exempt them, because such grant by its terms does not include lands withdrawn or reserved. If the subsequent grant is in terms like the grant to the Oregon & California Railroad Company, involved in that case (176 U. S., 28), *the withdrawal does not exempt such lands because the terms of the grant include and grant lands which have been withdrawn or reserved, the title to which is in the United States at the date of the subsequent grant.*

In the case of *United States vs. Oregon & California Railroad Company*, 176 U. S., 28, the facts are as follows:

After the grant to the Northern Pacific Railroad Company of July 2, 1864, on the 25th of July, 1866, Congress made a grant to aid in the construction of a railroad from Portland to the Central Pacific Railroad in California. The grant was to the Oregon & California Railroad Company, which company on the 29th of October, 1869, filed its map of definite location of its general route, opposite to the land in suit. And in February, 1870, the lands in controversy were withdawn by order of the Secretary of the Interior under the grant of 1866.

On March 6, 1865, President Perham, of the Northern Pacific Railroad Company, sent a communication and map to the Secretary of the Interior, asking that lands be withdrawn in accordance with the map for the benefit of the Northern Pacific Railroad Company. The Secretary declined to make the withdrawal.

August 4, 1870, the Northern Pacific Railroad Company filed two maps of the general route of its road which were accepted, and withdrawals of the lands were made by the Secretary in accord with said maps August 13, 1870, and October 27, 1870, which embraced the lands in dispute.

There was never any definite location of the Northern Pacific Railroad opposite to the land.

The question presented in this case was this: The grant to the Northern Pacific Railroad Company made July 2, 1864, being a grant of only the lands to which the United States had full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claim or rights, at the time the line of said road was definitely fixed, and no definite line of the road having been fixed, did the grant made for the Oregon & California Railroad Company on July 26, 1866, (said company having fixed the definite line of it road on October 29, 1869), convey to that company the lands in dispute? The Court held that the land did pass to the Oregon & California Railroad Company by that subsequent grant.

The decision was upon the ground that the grant to the Northern Pacific Railroad Company entitled it to only such lands as the United States had title to, and which were not reserved, sold, granted or otherwise appropriated, and were free from pre-emption or other claims or rights at the time the line of said road should be definitely fixed. That at any time before the line of said road should be definitely fixed, the United States had authority to grant to other companies any of the lands, to which the United States retained the title. That at the time of the grant of July 26, 1866, for the Oregon & California Railroad Company, there had been no reservation of the land in the Perham map of the general route of the Northern Pacific Railroad filed March 6, 1865. But, that even if there had been such a withdrawal, the title to the lands withdrawn was in the United States and it could grant the lands, because the Northern Pacific Railroad Company had not filed its line of definite location and was entitled to only such lands as the United States had title to, not reserved or withdrawn, at the date when the definite location of the road should be made.

The granting clause of the Act of July 25, 1866, grants every alternate section of public lands, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile of said railroad line. While the grant to the Northern Pacific Railroad Company grants only public lands, not mineral, to which the United States had full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is definitely fixed.

We respectfully submit that the lands of the Loomis Lumber Company and others in a like situation involved in this action, were not covered by the Northern Pacific Act of July 2, 1864.

I will not attempt to discuss further the questions involved in this case, as they are so fully covered by the briefs of Messrs. Hamblett and Hoyt. I wish to say, however, that most of the points which they present apply to the lands claimed by the Loomis Lumber Company.

W. H. STANFORD,
Solicitor for Appellee,
Loomis Lumber Company.

No. 382. 89

Motion for leave to intervene

Office Supreme Court U.S.
FILED
NOV. 15 1902
JAMES H. McKENNEY,
Clerk.

Filed Nov. 15, 1902.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 382.

JOHN A. HUMBIRD ET AL., APPELLANTS,

v.

WALDO A. AVERY ET AL., APPELLEES.

Motion on Behalf of the United States for Leave to Intervene, and by all Parties for the Certification of the Entire Record to this Court, and Advancement of the Cause for Hearing.

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Supreme Court of the United States

OCTOBER TERM, 1902.

No. 382.

JOHN A. HUMBIRD ET AL.

v.

WALDO A. AVERY ET AL.

Motion on Behalf of the United States for Leave to Intervene, and also for Certification of Entire Record to this Court for Advancement of Cause for Hearing.

The Solicitor General, on behalf of the United States, moves the court for leave:

(1) To intervene in the above-entitled cause and participate in argument therein;

(2) To have the entire record and cause sent up by the circuit court of appeals to this court for its consideration; and

(3) To advance the cause for hearing.

As cause for this motion it is shown:

(1.)

The cause presents several important and difficult questions of law, the determination of which by this court is necessary to enable the Interior Department to proceed with the adjustment of the Northern Pacific land grant, and to properly administer subsequent laws relating to that grant.

(2.)

There are several other law questions presented in the cause, the determination of which is as important to public and private interests, and to future proceedings in the Interior Department, as is the determination of the questions certified by the circuit court of appeals.

(3.)

The cause presents several questions of law of general public interest which vitally affect the public domain of the United States, the Northern Pacific Railway Company, numerous purchasers from that company, and numerous claimants adverse to that company and its purchasers.

(4.)

The questions of law presented in said cause are of such a character and so vitally affect the United States and the administration of its public land laws, including the land grant to the Northern Pacific Railway Company, that the United States should be heard by counsel before determination thereof by this court.

John K. Richards,
Solicitor General.
Willis Van Devanter,
Assistant Attorney General.

Motion to Require Whole Cause to be Sent up from Circuit Court of Appeals, and Motion to Advance.

To the Honorable the Supreme Court of the United States:

Come now the parties to the above-entitled cause and join in moving the court as follows:

I.

For an order requiring the whole record and cause above entitled to be sent up by the circuit court of appeals to this court for its consideration.

II.

For an order advancing the said cause for hearing before this court upon the ground that the United States is concerned in said cause and that it involves matters of general public interest.

This motion is based on the record, certified copy of which is herewith submitted, and on the statement hereto attached of the questions arising upon the record.

H. H. HOYT,
Solicitor for Waldo A. Avery and All Other Defendants for Whom I Appear.
JAQUES & HUDSON,
Solicitors for Franklin Lumber Co.
M. H. STANFORD,
Sol. and of Counsel Le Sure Lumber Co.
L. C. HARRIS,
Solicitor for Def't Alger-Smith & Co.
JOHN G. WILLIAMS,
Solicitor for J. & G. K. Wentworth.

C. W. BUNN,
BILLSON & CONGDON,
J. B. KERR,
H. OLDENBURG,
Solicitors for Complainants.

Statement.

The above-entitled cause is a suit in equity which was commenced in the circuit court of the United States for the district of Minnesota by Messrs. Humbird and Weyerhaeuser, complainants, against the defendants above named, to secure a permanent injunction against the cutting of timber on about ten thousand acres of land claimed by the complainants, and to secure a decree adjudging the defendants the holders of the legal title in trust for the benefit of the complainants as to certain of these lands upon which patents had been issued by the United States, and a decree adjudging the complainants to be the equitable owners of all the lands (Transcript, pp. 14 and 15).

The source of title of the complainants is a conveyance from the Northern Pacific Railway Company, which is the successor in interest of the Northern Pacific Railroad Company (pp. 448–478, 513, 516). The title of the Northern Pacific Railroad Company depends upon the grant by act of Congress of July 2, 1864 (13 Stat., 365), and the joint resolution of Congress of May 31, 1870 (16 Stat., 378). The conveyance to the Northern Pacific Railway Company bore date September 22, 1899, and its deed to the plaintiff bore date January 19, 1900 (pp. 459, 468, 499, 503).

Part of the lands lie in the first indemnity belt created by the act of July 2, 1864, and part of the lands lie in the second indemnity belt created by the joint resolution of May 31, 1870. The lands are all situated in the State of Minnesota on the north shore of Lake Superior and east of the terminal limit established by the Secretary of the Interior at Duluth in 1896.

This court held in *United States v. Northern Pacific Railroad Company*, 177 U. S., 435, and in *Doherty v. Northern Pacific Railway Company*, 177 U. S., 421, that the true terminal was at Ashland, Wisconsin.

The titles of the defendants are all based upon entries made under the public land laws after the terminal limit at Duluth had been established by the Secretary of the Interior in 1896 and after these lands had been thrown open to entry as public lands of the United States in pursuance of the decision of the Secretary of the Interior so fixing the terminal, and before the decision by this court holding that the terminus was at Ashland (pp. 16–24).

In 1883, the Northern Pacific Railroad Company filed in the proper district land office selection lists specifying all of these lands as indemnity under the provisions of the act of July 2, 1864, and the joint resolution of May 31, 1870 (pp. 325, 368, 406). The said selection lists so far as they related to first indemnity lands made no specification of the lost lands in lieu of which the selections were made and so far as concerned the second indemnity lands the lists specified the losses in bulk but not tract for tract. In 1887 the railroad company filed in the proper local land office a list in bulk of the lost lands relied upon for the said first indemnity selections, and in 1893 filed rearranged lists of said selections of both first and second indemnity lands in which lost lands were specified tract for tract opposite the several tracts selected (pp. 346, 379, 441). All these lists were received and certified in the usual form by the local land officers, and duplicates thereof forwarded to the office of the Commissioner of the General Land Office at Washington. But the Secretary of the Interior never certified his approval of any of the selections, but subsequently canceled them and restored the lands to the public domain, after which the entries under which the defendants claim were made and allowed.

July 1, 1898, Congress incorporated in the sundry civil appropriation act (30 Stat. at Large, chapter 546, page 620) a provision for the adjustment of controversies relating to entries within the limits of the grant along the whole line of the Northern Pacific road. A copy of this provision is hereto appended marked "Exhibit A."

Of the lands in question a portion had been patented to the several defendants under their respective entries prior to the passage of the act of 1898. At the time of the passage of the act of 1898, a portion of the lands in question had been entered for which no patents have been issued. Since January 1, 1898, a portion of the lands in question have been entered by the defendants. At the time of the filing of complainants' bill, patents had been issued for a portion of the lands in question, and the remainder were covered by final certificates of entry, which purport to entitle the holders to receive patents as soon as they can be issued in the ordinary course of business by the Land Department.

The validity of all these patents and entries is conceded by the complainants unless affected by rights previously vested in the railroad company.

Of the patented lands, a portion lie in the first and a portion lie in the second indemnity limits of the railroad grant. Of the lands covered by final certificates a portion lie in the first and a portion in the second indemnity limits.

In the courts below the defendants contended that the bill should be dismissed upon the grounds:

First, that the selections of the railroad company were not valid (*a*) because, as claimed by the defendants, the selection lists failed to contain certain affidavits required by the regulations of the Interior Department, (*b*) that the lands selected were not shown to have been the indemnity lands nearest the lands lost from the place limits, (*c*) that lands were selected as indemnity upon one side of the road in lieu of lands lost from the place limits of the grant on the other side of the road, (*d*) that it was not shown by the complainants that the railroad company had paid the costs of surveying the land as required by law, (*e*) that the complainants had failed to show such losses from the place limits of the grant as would entitle it to select lands in the first indemnity limits, (*f*) that the complainants had failed to show that the railroad company was entitled to select any lands in the second indemnity limits, (*g*) that certain of the lost lands specified as bases for selections of lands in the second indemnity limits were not lost at such times and under such circumstances as to make them valid bases for selections within the second indemnity limits, (*h*) that no approval of any of the selections had been made by the Secretary of the Interior and that the railroad company acquired no rights in the absence of such approval;

Second, that the court had no jurisdiction of the subject-matter so as to grant relief of any kind as to those of the lands in question which were unpatented at the commencement of the suit;

Third, that the Northern Pacific Railway Company as successor to the Northern Pacific Railroad Company had accepted the provisions of the act of 1898, and had become obligated to relinquish in favor of the defendants all the lands in controversy.

In the courts below the complainants contended:

First, that the selections of the lands in question by the railroad company were in strict compliance with the regulations of the Secretary of the Interior and in compliance with the law, and that the selections were of lands properly subject to such selections and in lieu of lands for which the railroad company was entitled to receive indemnity, and that the subsequent erroneous disposition of the lands by the Secretary of the Interior (whether patents have issued or not) after the railroad company had acquired a vested right therein entitled the complainants to maintain this suit notwithstanding no formal approval of the selections had been made;

Second, that the interest of the complainants in the lands in question which had been patented was such as to entitle them to a decree holding the defendants trustees of the legal title;

Third, that the interest of the complainants in the unpatented lands was such a vested interest as entitled the complainants to a decree establishing their interests and restraining the defendants from denuding the lands of timber and destroying their value;

Fourth, that only such lands were affected by the act of 1898 as remained unsold in the hands of the railroad company at the time when they were included by the Secretary of the Interior in his list of contested lands contemplated by that act;

Fifth, that the act of 1898 had no application to lands patented either to the railroad company or to entrymen before its passage;

Sixth, that the act of 1898 is applicable only to lands claimed by actual settlers; whereas many of the entries of defendants were made under the timber and stone land act and other acts not requiring actual settlement;

Seventh, that there was no acceptance of the provisions of the act of 1898 by the Northern Pacific Railroad Company, and that when on July 21, 1898, the provisions of that act were accepted by the Northern Pacific Railway Company, it had not succeeded to the interest of the Northern Pacific Railroad Company in any of these lands (pp. 459–468).

The circuit court held that the act of 1898 applied to the lands patented both before and after its passage, and further held that as to the unpatented lands covered by final certificates of entry, the court had no jurisdiction.

The circuit court of appeals has certified to this court only two of the many Federal questions thus involved in the case. The certified questions are as follows:

"1. Is the act of July, 1898 (*vide* 30 Stat., pp. 620, 621), applicable to the determination of the rights of the parties to the 3400 acres of land aforesaid which were patented to the appellees or their predecessors in interest prior to the adoption of the act of July 1, 1898?

"2. Has the circuit court of the United States for the district of Minnesota or any court jurisdiction as respects the lands n controversy entered subsequent to January 1, 1898, and for which the appellees hold final receipts or certificates, to adjudicate the rights of the parties to this action in respect to said lands in advance of the issuance of patents therefor by the executive branch of the Government or should the courts decline jurisdiction until the Government has divested itself of the legal title to the lands by the issuance and delivery of patents?"

Copy of this certificate is hereunto appended, marked "Exhibit B."

It is apparent from the foregoing statement that the instructions of this court upon the questions of law submitted to it by the circuit court of appeals will not determine this controversy. The various contentions of both the complainants and defendants present Federal questions, and notwithstanding the advice of this court upon the questions certified, any decree which may be entered by the circuit court of appeals must inevitably be followed by an appeal to this court, which will involve an examination and consideration of the whole record and the determination of the questions which have been already urged as above set forth. Unless the entire case is now heard the effect of the certification must be to prolong the life of the litigation for at least two years beyond its ordinary course.

That the conflicting claims of title involved in this suit are matters of general public interest in which the Government is concerned, would seem to clearly follow from the well-established principle that the Government is so far concerned in the correct administration of its land laws and in the ultimate award of its public lands to the persons rightfully entitled thereto, that it is entitled to maintain a suit for the cancellation of a patent wrongfully issued to one person, in order that it may be in position to award the land to another. With respect, for instance, to such of these lands as have been patented, the Government might unquestionably of its own motion have instituted a suit to set aside the patents issued to the defendants in order that new patents might issue to the grantees of the railroad company if the latter are equitably entitled to the lands; and as the concernment of the Government in the premises is thus of such a character as to enable it to institute in its own name a suit to correct such errors, if any, as may have been involved in the issuance of these patents, it must also be sufficient to justify the advancement of the cause under the fifth subdivision of rule 26.

H. H. HOYT,
Solicitor for Waldo A. Avery et al., Defendants.
JAQUES & HUDSON,
Solicitors for Franklin Lumber Co.
M. H. STANFORD,
Sol. and of Counsel for Def't Le Sure L. Co.
L. C. HARRIS,
Solicitor for Def't Alger-Smith & Co.
JOHN G. WILLIAMS,
Solicitor for J. & G. K. Wentworth.

C. W. BUNN,
BILLSON & CONGDON,
J. B. KERR,
H. OLDENBURG,
Solicitors for Complainants.

Exhibit A.

Extract from Act of Congress Approved July 1st, 1898, Chapter 546 (30 Stat., p. 620).

That where, prior to January first, eighteen hundred and ninety-eight, the whole or any part of an odd-numbered section, in either the granted or indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of the grantee or its lawful successor is claimed to have attached by definite location or selection, has been purchased directly from the United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department, and where purchaser, settler or claimant refuses to transfer his entry as hereinafter provided, the railroad grantee or its successor in interest, upon a proper relinquishment thereof, shall be entitled to select in lieu of the land relinquished an equal quantity of public lands, surveyed or unsurveyed, not mineral or reserved and not valuable for stone, iron or coal, and free from valid adverse claim or not occupied by settlers at the time of such selection, situated within any State or Territory into which such railroad grant extends, and patents shall issue for the land so selected as though it had been originally granted; but all selections of unsurveyed lands shall be of odd-numbered sections, to be identified by the survey when made, and patent therefor shall issue to and in the name of the corporation surrendering the lands before mentioned, and such patents shall not issue until after the survey: *Provided, however*, That the Secretary of the Interior shall from time to time ascertain and, as soon as conveniently may be done, cause to be prepared and delivered to the said railroad grantee or its successor in interest, a list or lists of the several tracts which have been purchased or settled upon or occupied as aforesaid, and are now claimed by said purchasers or occupants, their heirs or assigns, according to the smallest Government subdivisions. And all right, title and interest of the said railroad grantee or its successor in interest in and to any of such tracts, which the said railroad grantee or its successor in interest may relinquish hereunder shall revert to the United States, and such tracts shall be treated, under the laws thereof, in the same manner as if no rights thereto had ever vested in the said railroad grantee, and all qualified persons who have occupied and may be on said lands as herein provided, or who have purchased said lands in good faith as aforesaid, their heirs and assigns, shall be permitted to prove their titles to said lands according to law, as if said grant had never been made; and upon such relinquishment said Northern Pacific Railroad Company or its lawful successor in interest may proceed to select, in the manner hereinbefore provided, lands in lieu of those relinquished, and patents shall issue therefor: *Provided further*, That the railroad grantee or its successor in interest shall accept the said list or lists so to be made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it, but it shall not be bound to relinquish lands sold or contracted by it or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron or coal: *And provided further*, That whenever any qualified settler shall in good faith make settlement in pursuance of existing law upon any odd-numbered sections of unsurveyed public lands within the said railroad grant to which the right of such railroad grantee or its successor in interest has attached, then upon proof thereof satisfactory to the Secretary of the Interior, and a due relinquishment of the prior railroad right, other lands may be selected in lieu thereof by said railroad grantee or its successor in interest, as hereinbefore provided, and patents shall issue therefor: And provided further, that nothing herein contained shall be construed as intended or having the effect to recognize the Northern Pacific Railway Company as the lawful successor of the Northern Pacific Railroad Company in the ownership of the lands granted by the United States to the Northern Pacific Railroad Company, under and by virtue of foreclosure proceedings against said Northern Pacific Railroad Company in the courts of the United States; but the legal question whether the said Northern Pacific Railway Company is such lawful successor of the Northern Pacific Railroad Company, should the question be raised, shall be determined wholly without reference to the provisions of this act, and nothing in this act shall be construed as enlarging the quantity of land which the said Northern Pacific Railroad Company is entitled to under laws heretofore enacted; and provided further, that all qualified settlers, their heirs or assigns, who, prior to January first, eighteen hundred and ninety-eight, purchased or settled upon or claimed in good faith, under color of title or claim of right under any law of the United States or any ruling of the Interior Department, any part of an odd-numbered section in either the granted or indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of such grantee or its lawful successor is claimed to have attached by definite location or selection, may in lieu thereof transfer their claims to an equal quantity of public lands surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron or coal, and free from valid adverse claim, or not occupied by a settler at the time of such entry, situated in any State or Territory into which said railroad grant extends, and make proof therefor as in other cases provided; and, in making such proof, credit shall be given for the period of their *bona fide* residence and amount of their improvements upon their respective claims in the said granted or indemnity limits of the land grant to the said Northern Pacific Railroad Company the same as if made upon the tract to which the transfer is made; and before the Secretary of the Interior shall cause to be prepared and delivered to said railroad grantee or its successor in interest any list or lists of the several tracts which have been purchased or settled upon or occupied as hereinbefore provided, he shall notify the purchaser, settler or claimant, his heirs or assigns, claiming against said railroad company, of his right to transfer his entry or claim, as herein provided, and shall give him or them option to take lieu lands for those claimed by him or them, or hold his claim and allow the said railroad company to do so under the terms of this act.

EXHIBIT "B."

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD and FREDERICK WEYERHAEUSER, Appellants,

versus

WALDO A. AVERY, GEORGE B. MORLEY, OLEAN LAND Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, Le Roy Brooks, John B. Kehl, C. M. Hill Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of West Virginia; June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee; Michael Kelley, Otto Carlson, Alger, Smith & Company, a Corporation Organized and Doing Business under the Laws of the State of Michigan; Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; S. J. Cusson, Johnson-Wentworth Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Cloquet Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Jethro G. Mitchell, Le Roy Brooks, and W. C. McClure, as Copartners Doing Business under the Firm Name of Mitchell & McClure, Appellees.

On certificate from the United States circuit court of appeals of the eighth circuit.

The United States circuit court of appeals of the eighth circuit sitting at the city of St. Paul in the State of Minnesota on the sixteenth day of June, 1902, hereby certifies that from the record in this court in the case above entitled in which John A. Humbird and Frederick A. Weyerhaeuser are appellants and Waldo A. Avery and others are appellees, and which is now pending in this court on an appeal from a decree of the circuit court of the district of Minnesota, these facts appear:

I.

On April 17, 1900, the appellants exhibited their bill against the appellees in the United States circuit court for the district of Minnesota wherein they alleged that by virtue of the congressional grants of land to the Northern Pacific Railroad Company (13 Stat., chapter 217, page 367 ; 16 Stat. 378, 379) the existence of the conditions and the performance of the acts requisite to entitle that company to the lands described in the bill and the subsequent conveyance of its right to these lands to the appellants they had become the owners of the entire equitable and beneficial interest in the 10,539 acres of land in the State of Minnesota, described in the bill, but that the Secretary of the Interior solely by reason of his erroneous decision that the eastern terminus of the Northern Pacific Railroad Company was at Duluth instead of at Ashland had permitted the appellees to enter these lands, had issued to them final receipts or final certificates to all the lands and had issued and delivered to them patents to more than 3,400 acres of these lands.

The appellants prayed for the usual decree to the effect that the appellees held the legal title to the lands in trust for them and that the trust should be executed. The appellees answered the bill, denied its material averments and alleged that they were entitled to the land under the provisions of the sundry civil appropriation act of July 1, 1898 (30 Stat. chapter 546, page 620). Evidence was produced, a final hearing was had in the circuit court, that court dismissed the bill and in due time the complainants appealed to this court from this decree of dismissal and their case is here pending and undetermined.

II.

The lands involved in this suit are within the indemnity limits of the grant to the Northern Pacific Railroad Company and there was such a deficiency of lands in the place limits and in the first indemnity limits of that grant that the railroad company was entitled to select, and to receive patents to these lands under the congressional grant to it (13 Stat. chapter 217, section 3, pages 367, 368; 16 Stat. 379). In October, 1883, the Northern Pacific Railroad Company selected these lands in lieu of lands lost from its grant of lands in the place and in the first indemnity limits under the direction and in accordance with the regulations of the Secretary of the Interior. Its selection of these lands was evidenced by lists thereof which were filed in the proper local land office at Duluth in the State of Minnesota in October, 1883, which were accepted and approved by the register and receiver of that office and were immediately transmitted to the Commissioner of the General Land Office. Afterwards and prior to May, 1893, in compliance with directions of the Secretary of the Interior, the company specified the particular lands lost from its grant in lieu of which these lands had been selected and matched each tract selected with a tract lost. In making its selection of these lands in 1883 it complied with the regulations and directions of the Secretary, and from that time to this it has complied with every lawful regulation and direction of the Secretary of the Interior or the Commissioner of the General Land Office relative to the selection of these lands, so that it was entitled to the approval of its selection thereof and to patents to them for at least five years before the act of July 1, 1898, (30 Stat. 621) was passed. Notwithstanding the grant to the company and the selection of said lands in the manner and form aforesaid, the Secretary of the Interior failed to approve said selection lists and failed to issue patents therefor to the railroad company until and after August 27, 1896, at which latter date he erroneously decided that the eastern terminus of the Northern Pacific railroad was at Duluth, when he should have decided that it was at Ashland, Wisconsin. As the lands in controversy lie east of the city of Duluth in the State of Minnesota, the company would not have been entitled to select the lands as part of the grant if the decision of the Secretary as to the eastern terminus of the company's road had been right, but it was entitled to select them, as the true terminus of said road as it was afterwards decided was at Ashland, Wisconsin. In consequence of the erroneous ruling of the Secretary of the Interior as to the eastern terminus of the railroad, the lists of selections aforesaid have never as yet been approved by the Secretary of the Interior but after such erroneous decision was made, in the year 1896, the Secretary of the Interior caused the entries of said lands by the company to be cancelled, declared the lands open to settlement and entry, and proceeded to issue final receipts and final certificates, and, in some instances, patents for said lands, to the appellees or their grantors, under the public land laws of the United States, holding that the railroad company had no right thereto.

III.

Prior to the passage of the act of July 1, 1898, the Secretary of the Interior had, pursuant to his erroneous ruling relative to the eastern terminus of the railroad in question, caused patents to be issued and delivered to the appellees or their grantors for about thirty-four hundred (3400) acres of the lands in question in this suit.

IV.

At the time of the passage of the act of July 1, 1898, (30 Stat. 621) about 2800 acres of the land in question in this suit had been entered by the appellees or their grantors prior to January 1, 1898, but no patents therefor had been issued.

V.

Since January 1, 1898, the appellees or their grantors have been permitted to enter about 5000 acres of the lands in controversy in this action. The situation at the time of the filing of the bill of complaint herein was as follows: Of the lands claimed by the appellants as successors in interest of the Northern Pacific Railroad Company about 3400 acres thereof were held by the appellees under patents issued by the Government prior to July 1, 1898. For the residue of the lands the appellees held final receipts and final certificates. Such final receipts and final certificates as respects about 5000 acres being for tracts of land that were entered subsequent to January 1, 1898. As respects the lands for which final receipts and final certificates have been issued nothing, so far as appears, remains to be done by the executive department of the Government save the issuance of patents.

VI.

The Northern Pacific Railroad Company accepted the terms and provisions of the act of July 1, 1898, by a resolution duly enacted and approved by its board of directors, and subsequently and before the commencement of this suit all of its right, title and interest in all of the lands in question was duly conveyed to, and vested in the appellants.

And the United States circuit court of appeals hereby certifies that to the end that it may properly decide this case it desires the advice and instruction of the Supreme Court of the United States upon the following questions of law, which are duly raised and presented by the record herein and the decision whereof is necessary to a correct determination of the case:

1. Is the act of July 1, 1898, (*vide* 30 Stat., pp. 620, 621) applicable to the determination of the rights of the parties to the 3400 acres of land aforesaid which were patented to the appellees or their predecessors in interest prior to the adoption of the act of July 1, 1898?

2. Has the circuit court of the United States for the district of Minnesota or any court *of* jurisdiction as respects the lands in controversy entered subsequent to January 1, 1898, and for which the appellees hold final receipts or certificates, to adjudicate the rights of the parties to this action in respect to said lands in advance of the issuance of patents therefor by the executive branch of the Government, or should the courts decline jurisdiction until the Government has divested itself of the legal title to the lands by the issuance and delivery of patents?

In witness whereof, the undersigned judges of the said United States circuit court of appeals for the eighth circuit have hereunto set their hands this 16th day of June, 1902, at St. Paul in the State of Minnesota and hereby order and direct that the foregoing certificate be filed in said circuit court of appeals and that it be forwarded by the clerk of said court to the Supreme Court of the United States.

(Signed) WALTER H. SANBORN,
AMOS M. THAYER,
JOHN E. CARLAND,
Judges of the United States Circuit Court of Appeals for the Eighth Circuit.

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD ET AL., Appellants,
vs. No. 1673.
WALDO A. AVERY ET AL., Appellees.

Appeal from the circuit court of the United States for the district of Minnesota.

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Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1902, of said court, begun and held at the United States court-house in the city of St. Paul, Minnesota, on the first Monday in May, to wit: the fifth day of May, A. D. 1902, before the Honorable Walter H. Sanborn and Honorable Amos M. Thayer, circuit judges, and Honorable John E. Carland, district judge.

Attest:

[Seal U. S. C. C. A.]

(Signed) JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered, that heretofore, to wit, on the twenty-seventh day of November, A. D. 1901, a transcript of record pursuant to an appeal from the circuit court of the United States for the district of Minnesota, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, wherein John A. Humbird and Frederick Weyerhaeuser, were appellants, and Waldo A. Avery and others, were appellees, which said transcript of record was docketed in said circuit court of appeals as number 1673.

That thereafter the following proceedings were had in said cause, in said circuit court of appeals, viz:

(*Appearance for Appellants.*)

On the twenty-seventh day of November, A. D. 1901, an appearance of counsel for appellants was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

J. A. HUMBIRD ET AL., Appellants,
vs.
WALDO A. AVERY ET AL.
No. 1673.

The clerk will enter *my* appearance as counsel for the appellants.

H. OLDENBURG.
WM. W. BILLSON.
CHESTER A. CONGDON.
D. A. DICKINSON.
JAMES B. KERR.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1673. J. A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Appearance. Filed Nov. 27, 1901. John D. Jordan, clerk. H. Oldenburg, Wm. W. Billson, Chester A. Congdon, D. A. Dickinson, James B. Kerr, counsel for appellants.

(*Appearance for Appellants.*)

And on the thirteenth day of May, A. D. 1902, an appearance of Mr. C. W. Bunn, as counsel for appellants was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD ET AL., Appellants,
vs.
WALDO A. AVERY ET AL.
No. 1673.

The clerk will enter my appearance as counsel for the appellants.

C. W. BUNN.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Appearance. Filed May 13, 1902. John D. Jordan clerk. C. W. Bunn, counsel for appellants.

(*Appearance for Appellees.*)

And on the twenty-seventh day of November, A. D. 1901, an appearance of Mr. L. C. Harris, as counsel for certain appellees, was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD and FREDERICK WEYERHAEUSER, Complainants and Appellants,
vs.
WALDO A. AVERY, OLEAN LAND COMPANY, ALGER-SMITH & Company, *et al.*, Defendants and Appellees.

You will please enter my appearance as counsel for the defendants, The Olean Land Company and Alger-Smith & Company, in the above-entitled action.

L. C. HARRIS.

Dated November 4, A. D. 1901.

To the clerk of the circuit court of appeals.

(Endorsed:) No. 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Appearance for Olean Land Company and Alger-Smith and Company, appellees. Filed Nov. 27, 1901. John D. Jordan, clerk. L. C. Harris, Duluth, Minn., counsel for appellees.

(Appearance for Appellees.)

And on the nineteenth day of March, A. D. 1902, an appearance of Mr. H. H. Hoyt, as counsel for the appellees, was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD ET AL., Appellants,
vs. } No. 1673.
WALDO A. AVERY ET AL.

The clerk will enter my appearance as counsel for the appellees.

H. H. HOYT.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1673. John A. Humbird *et al.*, appellants, *vs.* Waldo A. Avery *et al.* Appearance. Filed Mar. 19, 1902. John D. Jordan, clerk. H. H. Hoyt, 310 Manhattan building, Duluth, Minn., counsel for appellees.

(Appearance for Appellees.)

And on the thirty-first day of March, A. D. 1902, an appearance of Mr. M. H. Stanford, as counsel for certain appellees, was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit. In Equity.

JOHN A. HUMBIRD and FREDERICK WEYERHAEUSER, Appellants,

vs.

WALDO A. AVERY, GEORGE B. MORLEY, OLEAN LAND COMpany, Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, Le Roy Brooks, John B. Kehl, C. M. Hill Lumber Company, June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie G. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee; Michael Kelly, Otto Carlson, Alger Smith & Company, Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Morris Realty Company, Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward E. Manwaring, B. C. Cook, William O'Brien, Franklin Lumber Company, S. J. Cusson, Johnson-Wentworth Company, Cloquet Lumber Company, Jethro G. Mitchell, Le Roy Brooks, and W. C. McClure, as Copartners Doing Business under the Firm Name of Mitchell & McClure, Respondents and Appellees.

The clerk of this court will please enter my appearance as solicitor and counsel for The Lesure Lumber Company, one of the respondents in the above-entitled case.

Dated this 29th day of March, A. D. 1902.

M. H. STANFORD,
Solicitor and Counsel for Respondents and Appellees Lesure Lumber Company.

To John D. Jordan, clerk of said court.

(Endorsed:) 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Appearance. Filed Mar. 31, 1902. John D. Jordan, clerk. M. H. Stanford, counsel for certain appellees.

(*Appearance for Appellees.*)

And on the thirteenth day of May, A. D. 1902, an appearance of Mr. Benton Hanchett, as counsel for the appellees, was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD ET AL., Appellants,
vs. No. 1673.
WALDO A. AVERY ET AL.

The clerk will enter my appearance as counsel for the appellees.

BENTON HANCHETT.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Appearance. Filed May 13, 1902, John D. Jordan, clerk. Benton Hanchett, Saginaw, Mich., counsel for appellees.

(*Argument Commenced.*)

And on the thirteenth day of May, A. D. 1902, in the record of the proceedings of said circuit court of appeals is an entry in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1902.

TUESDAY, *May* 13, 1902.

JOHN A. HUMBIRD ET AL., Appellants,
vs. No. 1673.
WALDO A. AVERY ET AL.

Appeal from the circuit court of the United States for the district of Minnesota.

This cause having been called for hearing in its regular order, the time for argument of this cause was extended one hour to each side, upon application of counsel for appellants.

Whereupon, argument was commenced by Mr. C. W. Bunn, for the appellants and continued by Mr. Benton Hanchett for appellees, and the hour of adjournment having arrived further argument was postponed until tomorrow.

(*Order of Submission.*)

And on the fourteenth day of May, A. D. 1902, in the record of proceedings of said circuit court of appeals is an order of submission in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1902.

WEDNESDAY, *May* 14, 1902.

JOHN A. HUMBIRD ET AL., Appellants,
vs.
WALDO A. AVERY ET AL.
No. 1673.

Appeal from the circuit court of the United States for the district of Minnesota.

This cause having been called for further hearing, argument was continued by Mr. Hanchett for appellees and concluded by Mr. William W. Billson for appellants.

Thereupon, this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

(*Order to Certify Questions to Supreme Court.*)

And on the sixteenth day of June, A. D. 1902, in the record of the proceedings of said circuit court of appeals, is an order to certify questions to the Supreme Court of the United States, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1902.

MONDAY, *June* 16, 1902.

JOHN A. HUMBIRD ET AL., Appellants, *vs.* WALDO A. AVERY ET AL.	No. 1673.

Appeal from the circuit court of the United States for the district of Minnesota.

In this cause it is now here ordered that certain questions arising upon the record herein, be, and the same are hereby ordered to be certified to the Supreme Court of the United States under the provisions of section six of the act of Congress approved March 3, 1891, for the instruction of the said Supreme Court to this court upon said questions.

Said certificate is as follows, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

John A. Humbird and Frederick Weyerhaeuser, Appellants,

versus

Waldo A. Avery, George B. Morley, Olean Land Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, Le Roy Brooks, John B. Kehl, C. M. Hill Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of West Virginia; June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee; Michael Kelley, Otto Carlson, Alger, Smith & Company, a Corporation Organized and Doing Business under the Laws of the State of Michigan; Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; S. J. Cusson, Johnson-Wentworth Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Cloquet Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Jethro G. Mitchell, Le Roy Brooks, and W. C. McClure, as Copartners Doing Business under the Firm Name of Mitchell & McClure, Appellees.

On certificate from the United States circuit court of appeals of the eighth circuit.

The United States circuit court of appeals of the eighth circuit sitting at the city of St. Paul in the State of Minnesota on the sixteenth day of June, 1902, hereby certifies that from the record in this court in the case above entitled in which John A. Humbird and Frederick A. Weyerhaeuser are appellants and Waldo A. Avery and others are appellees, and which is now pending in this court on an appeal from a decree of the circuit court of the district of Minnesota, these facts appear :

I.

On April 17, 1900, the appellants exhibited their bill against the appellees in the United States circuit court for the district of Minnesota wherein they alleged that by virtue of the congressional grants of land to the Northern Pacific Railroad Company (13 Stat., chapter 217, page 367; 16 Stat. 378, 379) the existence of the conditions and the performance of the acts requisite to entitle that company to the lands described in the bill and the subsequent conveyance of its right to these lands to the appellants they had become the owners of the entire equitable and beneficial interest in the 10,539 acres of land in the State of Minnesota, described in the bill, but that the Secretary of the Interior solely by reason of his erroneous decision that the eastern terminus of the Northern Pacific Railroad Company was at Duluth instead of at Ashland had permitted the appellees to enter these lands, had issued to them final receipts or final certificates to all the lands and had issued and delivered to them patents to more than 3400 acres of these lands.

The appellants prayed for the usual decree to the effect that the appellees held the legal title to the lands in trust for them and that the trust should be executed. The appellees answered the bill, denied its material averments and alleged that they were entitled to the land under the provisions of the sundry civil appropriation act of July 1, 1898 (30 Stat., chapter 546, page 620). Evidence was produced, a final hearing was had in the circuit court, that court dismissed the bill and in due time the complainants appealed to this court from this decree of dismissal and their case is here pending and undetermined.

II.

The lands involved in this suit are within the indemnity limits of the grant to the Northern Pacific Railroad Company and there was such a deficiency of lands in the place limits and in the first indemnity limits of that grant that the railroad company was entitled to select, and to receive patents to these lands under the congressional grant to it (13 Stat., chapter 217, section 3, pages 367, 368; 16 Stat. 379). In October, 1883, the Northern Pacific Railroad Company selected these lands in lieu of lands lost from its grant of lands in the place and in the first indemnity limits under the direction and in accordance with the regulations of the Secretary of the Interior. Its selection of these lands was evidenced by lists thereof which were filed in the proper local land office at Duluth in the State of Minnesota in October, 1883, which were accepted and approved by the register and receiver of that office and were immediately transmitted to the Commissioner of the General Land Office. Afterwards and prior to May, 1893, in compliance with directions of the Secretary of the Interior, the company specified the particular lands lost from its grant in lieu of which these lands had been selected and matched each tract selected with a tract lost. In making its selection of these lands in 1883 it complied with the regulations and directions of the Secretary, and from that time to this it has complied with every lawful regulation and direction of the Secretary of the Interior or the Commissioner of the General Land Office relative to the selection of these lands, so that it was entitled to the approval of its selection thereof and to patents to them for at least five years before the act of July 1, 1898 (30 Stat., 621), was passed. Notwithstanding the grant to the company and the selection of said lands in the manner and form aforesaid, the Secretary of the Interior failed to approve said selection lists and failed to issue patents therefor to the railroad company until and after August 27, 1896, at which latter date he erroneously decided that the eastern terminus of the Northern Pacific railroad was at Duluth, when he should have decided that it was at Ashland, Wisconsin. As the lands in controversy lie east of the city of Duluth in the State of Minnesota, the company would not have been entitled to select the lands as part of the grant if the decision of the Secretary as to the eastern terminus of the company's road had been right, but it was entitled to select them, as the true terminus of said road as it was afterwards decided was at Ashland, Wisconsin. In consequence of the erroneous ruling of the Secretary of the Interior as to the eastern terminus of the railroad, the lists of selections aforesaid have never as yet been approved by the Secretary of the Interior but after such erroneous decision was made, in the year 1896, the Secretary of the Interior caused the entries of said lands by the company to be cancelled, declared the lands open to settlement and entry, and proceeded to issue final receipts and final certificates, and, in some instances, patents for said lands, to the appellees or their grantors, under the public land laws of the United States, holding that the railroad company had no right thereto.

III.

Prior to the passage of the act of July 1, 1898, the Secretary of the Interior had, pursuant to his erroneous ruling relative to the eastern terminus of the railroad in question, caused patents to be issued and delivered to the appellees or their grantors for about thirty-four hundred (3400) acres of the lands in question in this suit.

IV.

At the time of the passage of the act of July 1, 1898, (30 Stat. 621) about 2800 acres of the land in question in this suit had been entered by the appellees or their grantors prior to January 1, 1898, but no patents therefor had been issued.

V.

Since January 1, 1898, the appellees or their grantors have been permitted to enter about 5000 acres of the lands in controversy in this action. The situation at the time of the filing of the bill of complaint herein was as follows: Of the lands claimed by the appellants as successors in interest of the Northern Pacific Railroad Company about 3400 acres thereof were held by the appellees under patents issued by the Government prior to July 1, 1898. For the residue of the lands the appellees held final receipts and final certificates. Such final receipts and final certificates as respects about 5000 acres being for tracts of land that were entered subsequent to January 1, 1898. As respects the lands for which final receipts and final certificates have been issued nothing, so far as appears, remains to be done by the executive department of the Government save the issuance of patents.

VI.

The Northern Pacific Railroad Company accepted the terms and provisions of the act of July 1, 1898, by a resolution duly enacted and approved by its board of directors, and subsequently and before the commencement of this suit all of its right, title and interest in all of the lands in question was duly conveyed to, and vested in the appellants.

And the United States circuit court of appeals hereby certifies that to the end that it may properly decide this case it desires the advice and instruction of the Supreme Court of the United States upon the following questions of law, which are duly raised and presented by the record herein and the decision whereof is necessary to a correct determination of the case:

1. Is the act of July 1, 1898, (*vide* 30 Stat. pp. 620, 621) applicable to the determination of the rights of the parties to the 3400 acres of land aforesaid which were patented to the appellees or their predecessors in interest prior to the adoption of the act of July 1, 1898?

2. Has the circuit court of the United States for the district of Minnesota or any court *of* jurisdiction as respects the lands in controversy entered subsequent to January 1, 1898, and for which the appellees hold final receipts or certificates, to adjudicate the rights of the parties to this action in respect to said lands in advance of the issuance of patents therefor by the executive branch of the Government, or should the courts decline jurisdiction until the Government has divested itself of the legal title to the lands by the issuance and delivery of patents?

In witness whereof, the undersigned judges of the said United States circuit court of appeals for the eighth circuit have hereunto set their hands this 16th day of June, 1902, at St. Paul in the State of Minnesota and hereby order and direct that the foregoing certificate be filed in said circuit court of appeals and that it be forwarded by the clerk of said court to the Supreme Court of the United States.

(Signed) WALTER H. SANBORN,
AMOS M. THAYER,
JOHN E. CARLAND,
Judges of the United States Circuit Court of Appeals for the Eighth Circuit.

United States Circuit Court of Appeals for the Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing certificate in the case of John A. Humbird and Frederick Weyerhaeuser, appellants, *vs.* Waldo A. Avery, *et al.*, No. 1673, May term, 1902, was duly filed and entered of record in my office by order of said court and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereof.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States circuit court of appeals for the eighth circuit, at the city of St. Paul, Minnesota, this sixteenth day of June, A. D. 1902.

(Signed) JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(*Order for Injunction.*)

And on the sixteenth day of June, A. D. 1902, in the record of the proceedings of said circuit court of appeals is an order for injunction in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1902.

Monday, *June* 16, 1902.

John A. Humbird and Frederick Weyerhaeuser, Appellants,

vs.

Waldo A. Avery, George B. Morley, Olean Land Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, Le Roy Brooks, John B. Kehl, C. M. Hill Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of West Virginia; June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee; Michael Kelley, Otto Carlson, Alger, Smith & Company, a Corporation Organized and Doing Business under the Laws of the State of Michigan; Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; S. J. Cusson, Johnson-Wentworth Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Cloquet Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Jethro G. Mitchell, Le Roy Brooks, and W. C. McClure, as Copartners Doing Business under the Firm Name of Mitchell & McClure, Appellees.

No. 1673.

Appeal from the circuit court of the United States for the district of Minnesota.

This cause was argued and submitted to this court for consideration on the fourteenth day of May, A. D. 1902. It involves the decision of grave questions of law which have been certified to the Supreme Court for determination. Considerable time must elapse before a final determination of the rights of the parties to the title of the lands in question in this suit can be reached and it is important that meanwhile the lands remain in the same condition in which they now are. Upon due consideration,

It is ordered and adjudged that a writ of injunction issue out of and under the seal of this court directed to the appellees, their grantees, agents and servants, which shall command and strictly enjoin them and each of them to refrain from cutting or removing from any of the lands described in Exhibit A to the bill herein any timber or wood standing or lying thereon and from in any other way changing the state and condition in which such lands and the timber thereon now are until the final decision of this case or the further order of the court.

(*Writ of Injunction.*)

And on the second day of August, A. D. 1902, a writ of injunction was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to Waldo A. Avery, George B. Morley; Orlean Land Company, a corporation organized and doing business under the laws of the State of Minnesota; Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, Le Roy Brooks, John B. Kehl; C. M. Hill Lumber Company, a corporation organized and doing business under the laws of the State of Michigan; Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser; Norris Realty Company, a corporation organized and doing business under the laws of the State of Minnesota; Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien; Franklin Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota; S. J. Cusson; Johnson-Wentworth Company, a corporation organized and doing business under the laws of the State of Minnesota; Cloquet Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota; Jethro G. Mitchell, Le Roy Brooks, and W. C. McClure, as copartners doing business under the firm name of Mitchell and McClure, Greeting:

Whereas, in a certain suit in the United States circuit court of appeals for the eighth circuit removed there by the appeal of the complainants from the circuit court of the United States for the district of Minnesota, in which latter court John A. Humbird and Frederick Weyerhaeuser were complainants and you are respondents in chancery.

And whereas, the said circuit court of appeals by its order entered in this cause on the sixteenth day of June, A. D. 1902, ordered and directed that certain questions of law arising upon the face of the record herein be certified to the Supreme Court of the United States for the instruction of that court thereon, in pursuance of the provision of the act of Congress approved March 3, 1891, and by its further order also directed that an injunction issue herein pending the final determination of the rights of the parties to the title of the lands in question in this suit.

You and each of you, your grantees, agents and servants are hereby commanded and strictly enjoined to refrain from cutting or removing from any of the lands described in Exhibit A to the bill of complaint herein, any timber or wood standing or lying thereon, and from in any other way changing the state and condition in which such lands and the timber thereon now are until the final decision of this case or the further order of this court, and this you shall in nowise omit at your peril.

To the marshal of the United States for the district of Minnesota to execute and make due return.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this sixteenth day of June, A. D. 1902.

Issued at office in the city of St. Paul, Minnesota, in the eighth circuit, under the seal of said United States circuit court of appeals, the day and year last above written.

[SEAL.] (Signed) JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD and FREDERICK WEYERHAEUSER, Appellants,
vs.
WALDO A. AVERY ET AL., Respondents.

Service, on behalf of all the defendants in the above-entitled cause for whom we have appeared and answered, of the within writ of injunction, by copy thereof, is hereby admitted at the city of Duluth, Minnesota, this 23rd day of July, 1902.

H. H. HOYT,
Attorney for All Defendants for Whom We Have Appeared and Answered.

JAQUES & HUDSON,
Attorneys for All Defendants for Whom We Have Appeared and Answered.

JOHN G. WILLIAMS,
Attorney for All Defendants for Whom We Have Appeared and Answered.

M. H. STANFORD,
Attorney for All Defendants for Whom We Have Appeared and Answered.

L. C. HARRIS,
Attorney for All Defendants for Whom We Have Appeared and Answered.

(Endorsed:) U. S. circuit court of appeals. Eighth circuit. May term, 1902. No. 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Writ of injunction. Filed Aug. 2, 1902. John D. Jordan, clerk.

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing twelve pages contain full, true and complete copies of all the pleadings, record entries and proceedings in the United States circuit court of appeals for the eighth circuit (except the transcript of the record from the circuit court of the United States for the district of Minnesota) in a certain cause in said court wherein John A. Humbird and Frederick Weyerhaeuser are appellants, and Waldo A. Avery, *et al.*, are appellees, No. 1673, as full, true and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court of appeals, at the city of St. Louis, Missouri, in the eighth circuit, this eighth day of October, A. D. 1902.

[SEAL.] (Signed) JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Supreme Court of the United States.

No. 7.—October Term, 1904.

John A. Humbird and Frederick Weyerhaeuser *vs.* Waldo A. Avery et al.	On certificate from an order to the United States Circuit Court of Appeals for the Eighth Circuit.

[December 12th 1904.]

Mr. Justice **Harlan** delivered the opinion of the Court.

This case was brought before us upon questions certified by the Circuit Court of Appeals. Subsequently, the United States was allowed to intervene upon the general ground that the case involved important questions affecting the administration of the public land laws, including the grant to the Northern Pacific Railroad Company then in process of adjustment. And, on motion of the Government, the plaintiffs and defendants concurring, the whole record was ordered to be sent up for our consideration.

The case involves the title to numerous tracts of land situated on the line of the Northern Pacific Railway between Duluth and Ashland. The lands are described in an exhibit attached to the bill.

The plaintiffs Humbird and Weyerhaeuser sue as grantees of the Northern Pacific Railway Company, a Wisconsin corporation, which, it is claimed, succeeded in respect of the lands in dispute to all the rights, interests and ownership of the Northern Pacific Railroad Company created by the act of Congress of July 2d 1864, 13 *Stat.* 365, *c.* 217. They allege that the claims of the defendants constitute clouds upon their title.

The defendants assert title under the land laws as settlers and purchasers from the United States or grantees of such settlers and purchasers. But the bill alleges that the lands here in dispute are part of the grant to the Northern Pacific Railroad Company and that the Land Department wrongfully and unlawfully permitted the entries under which the defendants severally claim. The Circuit Court dismissed the bill, but without prejudice, except as to all lands here involved for which patents had been issued. 110 *Fed. Rep.* 465.

It seems both appropriate and necessary that the facts be fully stated. That statement we now proceed to make, premising that the present controversy had its origin, as will be presently shown, in conflicting orders or rulings in the Land Department as to what was the eastern terminus of the Northern Pacific Railroad.

By the above act of July 2d 1864, *c.* 217, Congress made a grant of lands to the Northern Pacific Railroad Company in aid of the construction of a railroad and telegraph line from some point on Lake Superior in Minnesota or Wisconsin to some point on Puget Sound with a branch via Columbia River to a point at or near Portland. The act established indemnity limits not more than ten miles beyond the limits of the alternate sections granted. 13 *Stat.* 365.

By a Joint Resolution, approved May 31st 1870, second indemnity limits were established within ten miles on each side of the road, beyond the limits prescribed in the company's charter. 16 *Stat.* 378, *Res.* 67. The effect of this resolution was to allow the company, under the direction of the Secretary of the Interior, to go into second indemnity limits in order to supply any deficiency in lands on its main line or branch.

On the 3d day of July 1882 the company transmitted to the Secretary of the Interior a map of definite location covering the proposed line from Thompson Junction on the St. Paul and Duluth Railroad near Duluth, Minnesota, to Ashland in Wisconsin. That map was duly approved by the Secretary of the Interior, and the lands embraced by it were withdrawn from sale or entry.

By resolution of the Board of Directors of the company, adopted August 28th 1884, Ashland was declared to be the eastern terminus of the road; and that resolution was accepted by the Secretary on December 3d 1884 as establishing such terminus.

The part of the road delineated on the map of definite location was constructed and was duly accepted; and in conformity with the directions of the Secretary the company, the Circuit Court states, filed lists of selections of lands, some in the first and others in the second indemnity limits, in lieu of lands lost to it in its place limits—such lists *including all the lands in controversy in this suit.* But the bill avers that no final action has ever been taken by the Land Department upon such lists; and they have not yet been approved by the Department.

Subsequently, on August 12th 1896, the Secretary of the Interior ruled that Duluth, not Ashland, was the eastern terminus of the railroad, and therefore that the land grant of 1864 did not embrace any lands between Duluth and Ashland. The company's lists of selections were thereupon cancelled by order of the Secretary, and the lands covered by them were thereafter treated by the Department as unappropriated public lands and were opened for sale and entry.

This appears from an official communication addressed by the Commissioner of the General Land Office, with the approval of the Secretary of the Interior, to the Register and Receiver at Duluth. In that communication the Commissioner said: "On August 27th 1896 the Secretary of the Interior rendered a decision wherein he held that the initial point on Lake

Superior or the eastern terminus of the grant to the Northern Pacific Railroad Company was at Duluth, Minnesota, and on December 24th 1896 he approved a diagram prepared by this office showing the eastern terminal of the grant. On January 23d 1897 a copy of so much of said diagram as related to or affected lands within your district was transmitted to you for the use and guidance of your office. The decision of the Secretary aforesaid had the effect of restoring to the public domain all lands lying east of said terminal which had theretofore been withdrawn on account of the grant to said railroad company. Therefore, to the end that all persons interested may have an opportunity to present any claims they may have to any of these lands, you will cause to be published for the period of thirty days, in some newspaper of general circulation in their vicinity, a notice referring to said Secretary's decision which in effect declared that all lands previously withdrawn on account of the grant to the Northern Pacific Railroad Company and lying east of the terminal established at Duluth are restored to the public domain and are subject to disposal at your office."

Under the above ruling of the Secretary as to the eastern terminus, the defendants were allowed to make entries and purchases on the line of the railroad between Duluth and Ashland, despite the company's map of definite location and the lists of selections filed by it with the Secretary. In reference to the action of the Interior Department, the Circuit Court said: "By reason of the erroneous ruling of the Secretary of the Interior as to the location of the eastern terminus of said railroad, and his revocation of his prior approval of lawful selections by the railroad company of indemnity lands, and permitting sales and entries of such selected lands, as unappropriated, he had introduced confusion and conflict in respect to the right to such lands, which was beginning to be litigated in the courts; . . The fact that patents had issued in a few instances would not end such disputes as to the lands so patented, as courts would adjudge the patentee in any case to hold the title in trust for the other party, wherever the other party had clearly the right to the land." 110 *Fed. Rep.* 465, 469.

Such was the situation when Congress incorporated into the body of the Sundry Civil Appropriation act of July 1st 1898, 30 *Stat.* 597, 620, *c.* 546, subdivision, "Surveying the Public Lands," certain provisions relating to the Northern Pacific land grant. As these provisions disclose a scheme or plan for the settlement of the disputes arising out of the conflicting rulings in the Land Department in reference to the eastern terminus of the railroad, and its action in reference to the public lands between Duluth and Ashland, they should all be examined in order to ascertain the intention of Congress. They are therefore here given in full.

By that act—dividing it, for convenience, into paragraphs—it was provided:

"That where, prior to January first, eighteen hundred and ninety-eight, the whole or any part of an odd-numbered section, in either the granted or the indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of the grantee or its lawful successor is claimed to have attached by definite location or selection, has been purchased directly from the United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department, and where purchaser, settler or claimant refuses to transfer his entry as hereinafter provided, the railroad grantee or its successor in interest, upon a proper relinquishment thereof, shall be entitled to select in lieu of the land relinquished an equal quantity of public lands, surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron, or coal, and free from valid adverse claim or not occupied by settlers at the time of such selection, situated within any State or Territory into which such railroad grant extends, and patents shall issue for the land so selected as though it had been originally granted; but all selections of unsurveyed lands shall be of odd-numbered sections, to be identified by the survey when made, and patent therefor shall issue to and in the name of the corporation surrendering the lands before mentioned, and such patent shall not issue until after the survey:

2. "*Provided, however,* That the Secretary of the Interior shall from time to time ascertain and, as soon as conveniently may be done, cause to be prepared and delivered to the said railroad grantee or its successor in interest a list or lists of the several tracts which have been purchased or settled upon or occupied as aforesaid, and are now claimed by said purchasers or occupants, their heirs or assigns, according to the smallest Government subdivision. And all right, title, and interest of the said railroad grantee or its successor in interest in and to any of such tracts, which the said railroad grantee or its successor in interest may relinquish hereunder shall revert to the United States, and such tracts shall be treated, under the laws thereof, in the same manner as if no rights thereto had ever vested in the said railroad grantee, and all qualified persons who have occupied and may be on said lands as herein provided, or who have purchased said lands in good faith as aforesaid, their heirs and assigns, shall be permitted to prove their titles to said lands according to law, as if said grant had never been made; and upon such relinquishment said Northern Pacific Railroad Company or its lawful successor in interest may proceed to select, in the manner hereinbefore provided, lands in lieu of those relinquished, and patents shall issue therefor:

3. "*Provided further,* That the railroad grantee or its successor in interest shall accept the said list or lists so to be made by the Secretary of the Interior as conclusive with respect to the particular lands to be relin-

quished by it, but it shall not be bound to relinquish lands sold or contracted by it or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron, or coal:

4. "*And provided further*, That whenever any qualified settler shall in good faith make settlement in pursuance of existing law upon any odd-numbered sections of unsurveyed public lands within the said railroad grant to which the right of such railroad grantee or its successor in interest has attached, then upon proof thereof satisfactory to the Secretary of the Interior, and a due relinquishment of the prior railroad right, other lands may be selected in lieu thereof by said railroad grantee or its successor in interest, as hereinbefore provided, and patents shall issue therefor:

5. "*And provided further*, That nothing herein contained shall be construed as intended or having the effect to recognize the Northern Pacific Railway Company as the lawful successor of the Northern Pacific Railroad Company in the ownership of the lands granted by the United States to the Northern Pacific Railroad Company, under and by virtue of foreclosure proceedings against said Northern Pacific Railroad Company in the courts of the United States, but the legal question whether the said Northern Pacific Railway Company is such lawful successor of the said Northern Pacific Railroad Company, should the question be raised, shall be determined wholly without reference to the provisions of this act, and nothing in this act shall be construed as enlarging the quantity of land which the Northern Pacific Railroad Company is entitled to under laws heretofore enacted:

6. "*And provided further*, That all qualified settlers, their heirs or assigns, who, prior to January first, eighteen hundred and ninety-eight, purchased, or settled upon or claimed in good faith, under color of title or claim of right under any law of the United States or any ruling of the Interior Department, any part of an odd-numbered section in either the granted or indemnity limits of the land grant to the Northern Pacific Railroad Company to which the right of such grantee or its lawful successor is claimed to have attached by definite location or selection, may in lieu thereof transfer their claims to an equal quantity of public lands, surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron, or coal, and free from valid adverse claim, or not occupied by a settler at the time of such entry, situated in any State or Territory into which such railroad grant extends, and make proof therefor as in other cases provided; and in making such proof, credit shall be given for the period of their *bona fide* residence and amount of their improvements upon their respective claims in the said granted or indemnity limits of the land grant to the said Northern Pacific Railroad Company the same as if made upon the tract to which the transfer is made; and before the Secretary of the Interior shall cause to be prepared and delivered to said railroad grantee or its successor in interest any list or lists of the several tracts which have

been purchased or settled upon or occupied as hereinbefore provided, he shall notify the purchaser, settler or claimant, his heirs or assigns, claiming against said railroad company, of his right to transfer his entry or claim, as herein provided, and shall give him or them option to take lieu lands for those claimed by him or them, or hold his claim and allow the said railroad company to do so under the terms of this act." 30 *Stat.* 597, 620.

The provisions of that act were formally accepted in writing by the Northern Pacific Railway Company on the 13th of July 1898 in writing, and such written acceptance was promptly transmitted by the company to the Secretary of the Interior.

In a case in the Supreme Court of Wisconsin, determined shortly before the act of 1898, it was held, contrary to the ruling of the Interior Department in 1896, that Ashland, and not Duluth, was the eastern terminus of the Northern Pacific Railway. *Northern Pacific Railway Co.* v. *Doherty,* 100 *Wis.* 39. Upon writ of error to this court that judgment was affirmed. *Doherty* v. *Northern Pacific Railway Co.,* and *United States* v. *Northern Pacific Railroad Compony,* 177 *U. S.* 421 and 435.

After the above decisions by this court—which were rendered April 16th 1900—the Secretary of the Interior revoked the order cancelling the company's above lists of selections, and reinstated them. Shortly before those cases were argued here, namely, on January 19th 1900—and apparently to meet the contingency of a reversal by this court of the judgment of the Supreme Court of Wisconsin—the Northern Pacific Railway Company made conveyances with warranty to the plaintiffs Humbird and Weyerhaeuser, of all the lands, aggregating more than 10,000 acres, the title to which is here in dispute. As appears from the record, these conveyances were made after the Land Department had issued regulations to facilitate the adjustment of claims under the act of July 1st 1898. It should be recalled here that the lands covered by those conveyances were placed on the above list of selections filed by the railroad company, but those lists had not then nor have they since received the approval of the Secretary.

It is contended by the plaintiffs that the result of the above decisions in this court, adjudging the eastern terminus of the Northern Pacific Railroad to be at Ashland, Wisconsin, and not at Duluth, ~~Wisconsin~~ nnesota, was that the odd-numbered alternate sections between Duluth and Ashland, on either side of the railroad, as definitely located, to the extent and within the limits prescribed, and not excluded from the grant of July 2d 1864, were to be deemed public lands, from which that grant could be supplied, and to which neither the defendants nor their grantors *after* the definite location of the road as shown by the company's accepted map of location could have acquired any valid title, by entry or settlement, or by purchase, except from the railroad grantee, and that the defense cannot be main-

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tained without violating the rights that were *vested* in the company *in virtue of* such definite location.

The defendants, of course, combat this view of the rights of the parties, and insist that they are fully protected in their claims by the act of 1898, all the provisions of which, as we have seen, were accepted by the railroad company.

In the statement accompanying the certified questions it is set forth that prior to the passage of the act of July 1st 1898 the Secretary of the Interior had, pursuant to his original ruling as to the eastern terminus of the railroad, caused patents to be delivered to defendant settlers or their grantors for about 3,400 acres of the lands involved in this suit; that at the time of the passage of that act about 2,800 acres of the lands in question had been entered by defendant settlers or their grantors prior to January 1st 1898, but no patents therefor had been issued; that after January 1st 1898 the settlers or their grantors were permitted to enter about 5,000 acres of the lands here in controversy. The situation is thus described in the statement sent up by the Circuit Court of Appeals: Of the lands claimed by the plaintiffs as successors in interest of the Northern Pacific Railroad Company about 3,400 acres thereof were held by the appellees under patents issued by the Government prior to July 1st 1898; for the residue of the lands the settlers held final receipts and final certificates, such final receipts and final certificates, as respects about 5,000 acres, being for tracts entered subsequent to January 1st 1898. In reference to the lands for which final receipts and certificates have been issued nothing, so far as appears, remains to be done by the Land Department except the issuing of patents.

The relief sought is a decree declaring, among other things, that the lands described in the exhibit attached to the bill and all the timber standing or lying thereon belong to the plaintiffs; that the entries, locations, final certificates, land office receipts and patents, under which the several defendants claim, be adjudged to be void and removed as clouds from the titles of the plaintiffs, and the defendants severally enjoined from asserting any title by virtue thereof; and that such of the defendants as hold patents may be declared to hold as trustees for the plaintiffs in respect of any title conveyed by such patents, or any timber, cut or uncut, on such lands.

The questions propounded to this court by the Circuit Court of Appeals are these:

"Is the act of July 1st 1898 applicable to the determination of the rights of the parties to the 3,400 acres of land which were patented to the appellees or their predecessors in interest prior to the adoption of the act of July 1st 1898?

"Has the Circuit Court of the United States for the District of Minnesota, or any court, jurisdiction as respects the lands in controversy entered subsequent to January 1st 1898, and for which the settlers hold final receipts or certificates, to adjudicate the rights of the parties to this action in respect to said lands in advance of the issuance of patents therefor by the executive branch of the Government, or should the courts decline jurisdiction until the Government has divested itself of the legal title to the lands by the issuance and delivery of patents?"

It is appropriate at the outset to refer to certain allegations of the bill which bring the determination of the case within a very narrow compass and make it unnecessary to consider some matters referred to by counsel. After setting out in detail the various steps taken by the railroad company to acquire a right to the lands in dispute, the bill alleges that "but for the *vested* rights" of the Northern Pacific Railroad Company and its grantees the several tracts of land in question would have been unappropriated public lands open to the several kinds of entries or location made with respect to them, severally; also, that "the several applications and proceedings with respect to the said several entries were in due form, and regularly conducted, as required by law, and, *in the absence of the vested rights of the said Northern Pacific Railroad Company and its grantees in the said premises,* would have been operative and effectual *to invest the several entrymen of said lands with complete equitable title thereto,* each of such entries and locations having been finally receipted for, allowed and approved by the proper land officers of the United States; the only act remaining for the United States or its officers to perform with respect to such entries being the issuance of the patent in cases where the patent has not already issued;" and that all of the said entries and locations of lands referred to in the exhibit filed with the bill were allowed, and the final certificates (and so far as issued the patents) issued therefor "under a mistake of law founded upon a certain erroneous ruling by the Secretary of the Interior, to the effect that the said Northern Pacific Railroad Company, and their successors in interest, were not entitled to any lands by virtue of said act of Congress, approved July 2d 1864, and said joint resolution approved May 31st 1870, granting lands to said Northern Pacific Railroad Company, east of that point on the line of said Northern Pacific Railroad where the same crosses the line of the St. Paul and Duluth Railroad, known as Thompson Junction."

Obviously, the first inquiry should be as to the object and scope of the act of 1898. Upon that point we do not think any doubt can be entertained, if the words of the act be interpreted in the light of the situation, as it actually was at the date of its passage. Here were vast bodies of land, the right and title to which was in dispute between a railroad company holding a grant of public lands, and occupants and purchasers—both sides claiming under the United States. The disputes had arisen out of conflicting orders or rulings of the Land Department, and it became the duty of the Government to remove the difficulties which had come upon the parties in consequence of such orders. The settlement of those disputes was therefore, as the Circuit Court said, a matter of public concern. If the disputes were not accommodated, the litigation in relation to the lands would become vexatious, extending over many years and causing great embarrassment. In the light of that situation Congress passed the act of 1898, which opened up a way for an adjustment upon principles that it deemed just and consistent with the rights of all concerned—the Government, the railroad grantee, and individual claimants. The railroad company evinced its approval of this action of the legislative department by a prompt acceptance of the act, in its entirety. By such unqualified acceptance the railroad company agreed that, so far as it had any claim to the lands in dispute, whatever the act of Congress required to be done might be done.

Promptly after the passage of that act the Land Department set about to administer its provisions, and to that end, as we have said, issued regulations for the guidance of all concerned.

During the progress of this work of administration, the railroad company, by conveyances to the present plaintiffs, assumed to pass such interest as it had in the lands here in question, with the effect—it is now claimed by the plaintiffs—to withdraw or exempt all the lands so sold from the operation of the act. The plaintiffs rest this claim upon that part of the act providing that the railroad grantee or its successor in interest "shall not be bound to relinquish lands sold or contracted by it or lands it uses or needs for railroad purposes, or lands valuable for stone, iron, or coal." (See above Par. 3.)

We have seen that the act (Par. 1 above) made it the duty of the Secretary of the Interior to ascertain from time to time, and cause to be prepared and delivered to the railroad grantee or its successor in interest, a list or lists of the several tracts purchased, settled upon or occupied, and claimed, at the date of the act, by such settlers, purchasers or occupants, their heirs and assigns, according to the smallest Government subdivisions. And the act provided that the railroad grantee or its successor should accept said list or lists "as conclusive, with respect to the particular lands to be relinquished by it." The contention of the plaintiffs, stated more fully, is, in effect, that it was competent for the company, notwithstanding its acceptance of the act, to take out of its operation any lands embraced by its terms, by simply selling or contracting to sell them before the delivery to it or to its successor in interest of the lists above mentioned. In other words—for the contention comes to that—the railroad company, so far as the act of 1898 was concerned, could, notwithstanding the acceptance of its provisions and on the day after such acceptance, have sold or contracted to sell its right, title and interest in and to all the lands embraced by those provisions. This would have left no lands whatever to which the act could apply. Such a result would have left unsettled all the disputes relating to any lands which the company chose, in its own interest, to sell while the Land Department was proceeding under the statute. We do not believe that Congress intended that it should be in the power of the railroad company in any such mode to defeat the operation of the act. Congress, manifestly, had reference to the situation as it was when the act of 1898 was passed.

If any rights had become vested in the Northern Pacific Railroad Company which could not, against or without its consent, be affected by an enactment like that of 1898, then the objection to legislation, on the ground that it interfered with vested rights, was waived by the acceptance of the act by its successor in interest; for it was entirely competent for the latter company, if it succeeded to all the rights of the railroad grantee, to agree to such a settlement as that devised by Congress. The rights acquired by the definite location of the road, and any selection of lands based thereon, became, upon the acceptance of the act, and so far as that company was concerned, subject to such settlement as the Land Department might legally make under that act. It could not by any sale or contract, made after the acceptance of the act, interfere with the full execution of its provisions. And the plaintiffs who claim to have purchased from the successor in interest of the railroad grantee can occupy no better position than the company from which they purchased. They were in a sense purchasers *pendente lite;* for the Secretary of the Interior was, at the time, as he is now, engaged in administering the act of Congress. By him or under his direction must be ascertained the facts upon which depend the inquiry whether the lands in question are within the indemnity limits of the land grant to the railroad company and so situated that a right to them attached by reason of the definite location of the road. He must also inquire whether such lands were purchased, by the respective defendants, directly from the United States, or were settled upon or claimed in good faith by qualified settlers under color of title or claim of right under a law of the United States or ruling of the Interior Department, and whether the purchaser, settler or claimant refuses to transfer his entry. Upon these facts also depends the right of the railroad grantee or its successor in interest (its rights being relinquished as provided in the act) to select in lieu of the lands relinquished an equal quantity of surveyed or unsurveyed public lands, not mineral or reserved, and not valuable for stone, iron or coal, and free from any adverse claim, or not occupied by settlers at the time of such selection, situated within any State or Territory into which the railroad grant extends.

Now it is sought, in advance of final action by the Land Department in execution of the act, to have it adjudged, *as between the parties to this* *suit*, that the lands in dispute, claimed by the defendants, cannot properly be placed on the lists which the Secretary may deliver to the railroad grantee or its successor in interest. But that is a question the solution of which depends, in part at least, on facts within the province, primarily, of the Secretary of the Interior to find. In short, he, and he alone, must ascertain the facts which enter into the question as to what lands are to go on the lists to be delivered to the railroad grantee or its successor in interest. The court should not, by any decree, as between parties who have no contract relations with each other, attempt indirectly to control the authority and discretion of that officer to determine what lands shall and what lands shall not be included in the lists to be prepared under his direction. The plaintiffs cannot invoke the aid of the court to have these questions concluded, even as between them and the defendants, by an admission made in their bill for the purposes of this case, that the final certificates and final receipts held by the respective defendants will entitle them to the lands they claim but for the "vested" rights acquired by the railroad company in virtue of the definite location of its road. The court should not assume that they are embraced by the act, in order simply that it may have an opportunity, as between the present parties, to decide a question of law, which cannot appropriately arise until at least all the facts are ascertained by the Land Department and final action is taken under the statute of 1898. Although it may be true, as alleged in the bill, that the defendants, not holding patents, have received and hold final certificates or final receipts, and that, so far as they are concerned, nothing more remains to be done in the Department except to issue patents, yet it is in the power of the Department, even after decree here, in this suit, to reopen the case as to each defendant of that class, and, sufficient grounds existing therefor, recall or cancel such certificates or receipts. The whole matter, in respect of the lands in dispute, is yet in the hands of the Department undisposed of finally under the act of 1898. Congress intended that the Department should, within the limit and according to the rules prescribed by the act of 1898, settle the disputes that had arisen between the railroad grantee and settlers, although, after the matter has passed beyond the jurisdiction of the Department, such settlements may become the subject of judicial inquiry for the protection of the rights of parties against any error of law committed by the Department.

Those views are in entire accord with the former decisions of this court. In *Johnson* v. *Townsley*, 13 *Wall.* 72, 87, it was said: "This court has at all times been careful to guard itself against an invasion of the functions confided by law to other departments of the Government, and in reference to the proceedings before the officers intrusted with the charge of selling the public lands it has frequently and firmly refused to interfere with them in the discharge of their duties, either by mandamus or injunction, so long as the title remained in the United States and the matter was rightfully before those officers for decision. On the other hand, it has constantly asserted the right of the proper courts to inquire, *after the title had passed from the Government*, and the question became one of private right, whether, according to the established rules of equity and the acts of Congress concerning the public lands, the party holding that title should hold absolutely as his own, or as trustee for another." So, in *Marquez* v. *Frisbie*, 101 *U. S.* 473, 475: "We have repeatedly held that the courts will not interfere with the officers of the Government while in the discharge of their duties in disposing of the public lands, either by injunction or mandamus. . . After the United States has parted with its title and the individual has become vested with it, the equities subject to which he holds it may be enforced, but not before. . . We did not deny the right of the courts to deal with the possession of the land prior to the issue of the patent, or to enforce contracts between the parties concerning the land. But it is impossible thus to transfer a title which is yet in the United States." What was said in the case just cited as to the power of the court to interfere, in certain cases, in advance of the issuing of the patent, was no doubt in the mind of the Circuit Court when, in its opinion in this case, it said: "It is unnecessary to decide whether a case may not arise, which, even while the disputed question as to the rights of contesting parties to a tract of public land is pending or cognizable before the Land Department, a court of equity may properly interfere by injunction at the suit of one of the claimants, to prevent the other claimant from despoiling the land by waste, and appropriating its substantial value, by denuding it of all its merchantable timber, before any final decision upon the disputed claims by the Land Department, which is only rendered by issuing the patent."

So, again, in *United States* v. *Schurz*, 102 *U. S.* 378, 395: "The Constitution of the United States declares that Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States. Under this provision the sale of the public lands was placed by statute under the control of the Secretary of the Interior. To aid him in the performance of this duty, a bureau was created, at the head of which is the Commissioner of the General Land Office, with many subordinates. To them, as a special tribunal, Congress confided the execution of the laws which regulate the surveying, the selling, and the general care of these lands. Congress has also enacted a system of laws by which rights to these lands may be acquired, and the title of the Government conveyed to the citizen. This court has with a strong hand upheld the doctrine that so long as the legal title to these lands remained in the United States, and the proceedings for acquiring it were as yet *in fieri*, the courts would not interfere to control the exercise of the power thus vested in that tribunal. To that doctrine we still adhere." As late as *Bockfinger* v. *Foster*, 190 *U. S.* 116, 126, we reaffirmed the principle, "that the courts will not interfere with the Land Department in its control and disposal of the public lands, under the legislation of Congress, so long as the title in any essential sense remains in the United States."

These principles are applicable to the particular scheme devised by the act of 1898 in reference to the lands in dispute. When the Land Department shall have done all that it can do in execution of the act of Congress, as to any particular lands in dispute, it will be time enough for interested private parties claiming an interest in them to invoke the aid of the courts for the determination of such questions of law as may arise out of the action of the Department. It is true that no order is asked here that will directly or in terms operate upon the Land Department. But a decree is asked, as between the parties now before the court, which must necessarily control or affect the action of the Department in respect of matters committed to it by Congress. Such interference by the court, although between private claimants only, would be inappropriate, especially as to lands covered by the act of 1898. .

What has been said is peculiarly applicable to the unpatented lands in dispute. It is equally applicable to lands patented both before and after the passage of the act, if such lands are *in dispute* and *belong to either of the classes described in the act of* 1898. We agree with the Circuit Court that the act "gives the option to keep or relinquish the disputed land to the individual claimant in every instance. If he elects to retain that land, it is to be listed by the Secretary in lists to be furnished to the railroad claimant, who must relinquish, and whose consent to this was given by the acceptance of the act." In case of such relinquishment by the railroad company, it acquires a right to select other lands in place of those retained by the individual claimant. If the individual claimant, having a patent, elects to surrender his right, then he must reconvey to the United States, and will then be entitled to select other lands in lieu of those surrendered. So that the statute embraces both patented and unpatented lands, in respect of which the railroad company or its successor in interest claims that a right thereto attached by the definite location of its road or by selection, provided they are also such lands as were originally "purchased directly from the United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department." The duty of a court of equity not to interfere with parties in the prosecution of their rights under the act, whereby the execution of its provisions in advance of final action by the Department would be embarrassed by judicial decision, is quite as imperative in cases of the patented lands in dispute as in the cases of unpatented lands. This view is not at all in conflict with those cases in which it has been held that after a patent issued for public lands the only remedy for one who claims the land, as against the patentee, is to bring a suit against the person holding the patent, and obtain a decree declaring the patentee a trustee for the party suing. This general principle does not apply to cases embraced by the act of 1898. That act is peculiar in its provisions, and contemplates that the individual claimant of one of the classes described in it may hold the land patented to him, if he elects to retain it, and that the railroad grantee or its successor in interest can be made whole by taking lieu lands in place of those claimed in virtue of definite location or selection.

For the reasons stated, neither the claim of vested rights in behalf of the railroad grantee, nor the contention that the lands in dispute, having been sold to the plaintiffs, were not for that reason embraced by the act of 1898, furnishes any ground for interference by a court of equity or for the granting of the relief asked.

This conclusion is fortified, if not absolutely demanded, by another consideration, namely, that no title to indemnity lands is vested until a selection be made by which they are definitely ascertained, and the selection made *approved by the Secretary of the Interior.* This principle is firmly established. A full statement of it is found in *Wisconsin Central R. R.* v. *Price County*, 133 *U. S.* 496, 511. The court there said: "He [the Secretary] was required to determine, in the first place, whether there were any deficiencies in the land granted to the company which were to be supplied from indemnity lands; and, in the second place, whether the particular indemnity lands selected could be properly taken for those deficiencies. In order to reach a proper conclusion on these two questions he had also to inquire and determine whether any lands in the place limits had been previously disposed of by the Government, or whether any pre-emption or homestead rights had attached before the line of the road was definitely fixed. . . *Until the selections were approved* there were no selections in fact, only preliminary proceedings taken for that purpose; *and the indemnity lands remained unaffected in their title.* Until then the lands which might be taken as indemnity were incapable of identification; the proposed selections remained the property of the United States. The Government was, indeed, under a promise to give the company indemnity lands in lieu of what might be lost by the causes mentioned. But such promise passed no title, and, until it was executed, created no legal interest which could be enforced in the courts." In *New Orleans Pacific Railway* v. *Parker*, 143 *U. S.* 42, 57, it was said: "As to lands within the indemnity limits, it has always been held that no title is acquired until the specific parcels have been selected by the grantee and approved by the Secretary of the Interior." And in *Michigan Land & Lumber Co.* v. *Rust*, 168 *U. S.* 589, 592–3, the court said: "Generally speaking, while the legal title remains in the United

States, the grant is in process of administration and the land is subject to the jurisdiction of the Land Department of the Government." To the same effect are *Sioux City &c. Railroad* v. *Chicago, Milwaukee &c. Railway*, 117 *U. S.* 406, 408; *United States* v. *Missouri &c. Railway*, 141 *U. S.* 358, 374; *Brown* v. *Hitchcock*, 173 *U. S.* 473, 479; *Kansas Pacific Railroad* v. *Atchison Railroad*, 112 *U. S.* 414, 421; *Barney* v. *Winona & St. Peter Railway*, 117 *U. S.* 228, 232; *Grinnell* v. *Railroad Co.*, 103 *U. S.* 739; *St. Paul &c. Railroad* v. *Winona & St. Peter Railroad*, 112 *U. S.* 720, 731; *Cedar Rapids & Missouri River Railroad* v. *Herring*, 110 *U. S.* 27.

Now, the lands here in dispute and claimed by the plaintiffs as grantees of the Northern Pacific Railway Company (the alleged successor in interest of the Northern Pacific Railroad Company) are lands admittedly within indemnity, as distinguished from granted or place, limits. The mere filing of lists of selections, after the acceptance of the map of definite location of the railroad line between Duluth and Ashland, gave the company no such title as could be enforced by the courts in a suit between private parties. It is true the Government was under a promise to give the railroad company lands in the indemnity limits to supply losses in place limits. But, as adjudged in the above cases, that promise passed no title. The promise will no doubt be fulfilled by the Government in due time, and in its own way. The selections not having been approved by the Secretary, the title remains in the Government. So that the plaintiffs, having no greater rights than those of the railroad grantee or its successor, has no such interest in the particular lands, specified in the railroad company's lists of unapproved selection, as entitles it, while the title remains in the United States, and while these lands are being administered by the Land Department, to ask a court of equity to decide, as between them and the defendants, that the latter could not by any entry or purchase acquire an interest after the acceptance by the Secretary of the railroad's map of definite location.

But it is suggested that the final action of the Department may be indefinitely postponed, to the great injury of the railroad grantee and those claiming under it. Delay in such matters was a contingency which the alleged successor in interest of the railroad grantee must have taken into account when accepting the act and assenting to the plan of settlement embodied in it. The Land Department was not required to complete its administration of the statute within any designated time. The act, upon its face, directs that the required lists be prepared and delivered to the railroad company "as soon as conveniently may be done." It cannot be assumed upon this record that the Department has not progressed with the work of administration as rapidly as all the circumstances and its convenience permitted. Even if the fact be otherwise, it is not for a court of equity, by its decree to decide, in the first instance, that the selections made by the railroad company of lien lands shall be approved by the Secretary, or to decide what lands should be on the lists required to be furnished to the railroad granted under the act of 1898; or to control directly or indirectly the work which Congress, with the assent of the railroad grantee, has committed to one of the Departments of the Government, or by an order interfere with the prosecution by the defendants of their claims under the act of 1898.

We are of opinion that the bill should have been dismissed upon the ground that a court of equity should not, in advance of the final action by the Secretary of the Interior in respect of lands embraced by the act of 1898 interfere with the regular and orderly administration of its provisions by means of a decree directed against claimants under that act. And without now expressing any opinion as to what questions may be raised by a claimant after such final action by the Land Department under that act, we adjudge that such dismissal must be without prejudice to any suit that may, according to established principles, be rightfully instituted by a claimant after the jurisdiction of the Department in respect of any particular lands has ceased. Thus modified, the decree of the Circuit Court must be affirmed.

It is so ordered.

Mr. Justice BREWER took no part in the decision of this case.

True copy.

Test:

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In the Supreme Court of the United States.

OCTOBER TERM, 1903.

JOHN A. HUMBIRD ET AL., APPELLANTS,
v.
WALDO A. AVERY ET AL., RESPONDENTS.
No. [illegible] 7.

THE UNITED STATES, INTERVENER.

CERTIFICATION FROM UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

October Term, 1903.

John A. Humbird et al., appellants,
v.
Waldo A. Avery et al., respondents.
The United States, intervenor.
} No. 49.

CERTIFICATION FROM UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The lands involved in this suit, aggregating about 10,539 acres, are situated in the State of Minnesota, and lie north and east of Duluth, and more than 20 and less than 40 miles north of the line of the Northern Pacific Railway Company (formerly the Northern Pacific Railroad Company) between Thomson Junction, Minnesota, and Ashland, Wis., and in view of the decisions of this court in *Doherty v. Northern Pacific Railway Company* (177 U. S., 421) and *United States v. Northern Pacific Railroad Company* (ib. 435), wherein the eastern terminus of the Northern Pacific Railroad Company's land grant was held to be at Ashland, Wis., are within the indemnity belts of the grant to the last-mentioned company, made by act of July 2, 1864 (13 Stat. 365, 367, 368), and the joint resolution of May 31, 1870 (16 Stat., 378, 379). Four thousand four hundred and fifty-one acres are within the indemnity limits established by section 3 of the act of July 2, 1864 aforesaid, commonly called the "first indemnity limits;" and 6,088 acres are within the indemnity limits established by said joint resolution, commonly called the "second indemnity limits."

It appears that such of these lands as fell within the limits of 20 miles of the line of probable route of the Lake Superior and Mississippi Railroad were, on May 26, 1864, by order of the Land Department, suspended from preemption, settlement, or private entry, adverse to the grant to the State of Minnesota made by the act of May 5, 1864 (13 Stat., 64), entitled "An act making a grant of lands to the State of Minnesota to aid in the construction of the railroad from Saint Paul to Lake Superior." (Record, pp. 764, 765.) Such of the lands as fell within 20 miles of the line of general route of the Northern Pacific Railroad shown upon the map filed August 15, 1870, were, on September 15, 1870, withdrawn from sale, location, preemption, and homestead entry; and, on December 12, 1871, all of the odd-numbered sections within the indemnity limits provided for by both the grant of 1864 and the resolution of 1870, were, by order of the Land Department, withdrawn "from sale or location, preemption, or homestead entry" for the benefit of the Northern Pacific

Railroad Company, under its grant. (Record, pp. 298, 299.) August 15, 1887, the Secretary of the Interior made an order revoking the last-mentioned order (6 L. D., 92, 93; 7 ib., 108). The order of withdrawal of indemnity land on account of the Northern Pacific Railroad land grant has been held by this court to have been made in violation of law. *Hewitt* v. *Schultz* (180 U. S., 139, 143, 156, 158).

All the lands were included in indemnity lists of selections made by the Northern Pacific Railroad Company subsequent to the filing by it in the office of the Commissioner of the General Land Office of the plat, approved by the Secretary of the Interior, showing the definite location of that part of its road extending easterly from Thomson Junction, Minnesota, to Ashland, Wis. These lists were filed by said company in the local land office at Duluth, Minn., between October 16, 1883, and November 10, 1883. (Record, pp. 325–406.) October 29, 1896, they were rejected by the Secretary of the Interior. (Northern Pacific Railroad Company, 23 L. D., 428, 429, 430.) The lands covered thereby were by the Land Department held to be subject to disposal under the public-land laws July 17, 1897. (Record, p. 116.) With the exception of 120 acres, which were entered August 8, 1893 (Record, p. 21), all the lands involved were entered under the public-land laws subsequent to October 29, 1896. (Record, pp. 17–25.)

May 28, 1883 (12 L. D., 196; Record, p. 185), the Secretary of the Interior, Mr. Teller, issued the following letter of instructions to the Commissioner of the

General Land Office with respect to selections of indemnity lands by the Northern Pacific Railroad Company:

> It is my desire to open for settlement as speedily as possible all the lands within the indemnity limits of the grant to the Northern Pacific Company not actually required to supply the lands lost in place within the granted limits.
>
> The grant should be adjusted at the earliest possible time, that the orders of withdrawal may be vacated without unreasonable delay, as indicated in my letter of the 17th instant.
>
> The unparalleled demand for lands for actual settlement by great numbers of persons, not only from foreign countries, but from the older States, seeking homes under the settlement laws along the line and in the vicinity of the Northern Pacific grant, requires, for the best interest of the country and for all parties concerned, that the withdrawals should not be maintained any longer than is actually necessary for the adjustment of the guaranteed rights of the company.
>
> In order to facilitate the work of making selections, I think you should instruct the local officers that when clear lists of selections, free from conflict or other objection, are filed with the district officers and approved by them, said selections should at once be marked upon their books and forwarded for final examination, leaving the ascertainment of the lands lost in place to your office, instead of requiring preliminary lists of such lost lands, together with

> the indemnity lands, tract for tract, from the company as heretofore.
>
> I am satisfied that the work of adjusting the grant will go forward much more rapidly under this plan than under the former practice.

July 11, 1883, Secretary Teller prescribed and promulgated the following amendment to the above letter of instructions (10 C. L. O., 154):

> I call your attention to my letters of May 17 and 28 last, relating to the Northern Pacific land grant, and particularly to the indemnity part of such grant. * * * Under the authority conferred and in discharge of the duty imposed upon me by the act, which provides that the selections shall be made under the direction of the Secretary of the Interior, I deem it best to indicate at the outset what, in my opinion, the practice should be in relation to selections. The amount of lands lost within each of the States named should be made up by selections within such State, without regard to quality, if there be sufficient within the indemnity limits for that purpose. I do not think it was the intention of the granting act, nor do I deem it just or equitable to the Government or to the settlers, to permit the company to cull the lands within such limits, leaving portions unselected because they are poor, and then selecting other lands farther along the line in place of lands lost within the granted limits of those States.

In the regulations for the adjustment of railroad land grants, approved by the Secretary of the Interior

November 7, 1879, and in effect December 1, 1883 (Record, pp. 541, 547), it is stated among other things, that—

> In the adjustment of grants for railroads the principle has until recently prevailed that indemnity was allowed for all lands sold, reserved, or disposed of within the granted limits, whether such sale, reservation, or disposal occurred before or after the granting act, and the certifications and patents have been executed in conformity thereto.
>
> In accordance with the recent decision of the Supreme Court in the case of the *Leavenworth, Lawrence and Galveston Railroad Company* v. *United States* (2 Otto, 733) it is held by the Department that indemnity can only be allowed for lands sold, reserved, or disposed of in the granted limits by the General Government after the granting act and prior to the time when the railroad right attached, unless the grant be one of quantity specifically set forth in the act. In the adjustment of all grants it consequently becomes necessary to know for what lands lost in place the indemnity selections are made, and with the view to that end you will require the companies to designate the specific tract for which the lands selected are claimed.

August 4, 1885 (4 L. D., 90; Record, p. 763), the following circular regulations with respect to railroad indemnity selections were issued by the Commissioner of the General Land Office, with the approval of the Secretary of the Interior, and addressed to the registers and receivers of the district land offices.

Before admitting railroad indemnity selections in any case you will require preliminary lists to be filed specifying the particular deficiencies for which indemnity is claimed. You will then carefully examine your records, tract by tract, to ascertain whether the loss to the grant actually exists as alleged. You will admit no indemnity selection without a proper basis therefor. If you are in doubt whether the company is entitled to indemnity for losses claimed you will transmit the preliminary lists to this Office for instructions, and will not place the selections upon record until directed so to do.

Where indemnity selections have heretofore been made without specification of losses you will require the companies to designate the deficiencies for which such indemnity is to be applied before further selections are allowed.

The selecting agent applying to make indemnity selections must state in his affidavit attached to the list presented that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner.

Where deficiencies exist for which indemnity is allowed by law, the lieu selections must be made from vacant unappropriated land within proper sections and limits *nearest* the granted sections in which the loss occurred. You will be careful to see that this rule is strictly complied with, and will reject all selections not made in conformity thereto.

October 14, 1893, the Secretary of the Interior, in the case of *La Bar* v. *Northern Pacific Railroad Company* (17 L. D., 406, 410), directed the Commissioner of the General Land Office to—

> * * * call upon all railroad companies having pending indemnity selections to revise their lists within six months from the date of your order, so that a proper basis will be shown for each and all lands now claimed as indemnity, the same to be arranged tract for tract in accordance with Departmental requirements, and that all tracts formerly claimed for which a particular basis has not been assigned in the manner prescribed, at the expiration of said six months, be disposed of under the terms of the orders restoring indemnity lands without regard to such previous claim.
>
> The requirements of the order of August 4, 1885, should also be enforced, and the companies should be required to specify a basis not only for the selections now pending, but for all selections heretofore approved, on account of which no previous loss has been assigned.
>
> This is as necessary to the protection of the interests of the United States, and as an aid in the adjustment of the grants, as the requirement of a specification of losses for pending selections, for without such designation on account of approved selections it can not be ascertained whether a particular loss now assigned has not already been fully satisfied by previous approvals.

Said selection lists, so far as they relate to first indemnity lands, made no specification of the lost lands in lieu of which the selections were made, and, so far as concerned the second indemnity lands, the lists specified the losses in bulk, but not tract for tract with the selected lands. In October, 1887, said company filed in the local land office a list in bulk of the lost lands relied upon for the first indemnity selections (Record, p. 332), and in July, 1891, there was filed in the local office by said company a rearranged indemnity list, wherein the losses as specified in the list filed in October, 1887, were arranged tract for tract with the selected lands (Record, p. 346), and on April 11, 1893, the said company filed in the local office rearranged lists of said selections of both first and second indemnity lands, in which the lost lands were specified tract for tract with the several tracts selected. (Record, pp. 379 *et seq.*) In none of the lists, however, was it specified that the lands selected were nearest the lands lost, nor was there attached to any of them an affidavit such as is prescribed by the circular of August 4, 1885 (4 L. D., 90). (Record, pp. 325 to 418, inclusive.) Nor does it appear that the cost of surveying the lands embraced in said lists has been paid or tendered to the Government. All the indemnity lists were received by the local land officers and duplicates thereof forwarded in due course to the office of the Commissioner of the General Land Office. (Record, *ib.*) The Secretary of the Interior, however, never certified his approval of any of said lists, nor has the adjustment of the grant to the Northern Pacific Railroad Company, so far as made, disclosed that there will be a deficiency in said grant. (25 L. D., 511, 514; Record, pp. 251, 768, 769.)

April 27, 1896, the Secretary of the Interior decided that the Northern Pacific Railroad Company had by its actions fixed the eastern terminus of its land grant at Duluth, Minn. (See 23 L. D., 204.) October 29, 1896, by reason of said decision the Secretary held, among other things, that all indemnity selection lists of said company which included lands east of Duluth, Minn., should be canceled. (Northern Pacific R. R. Co., 23 L. D., 428, 430.) April 17, 1897, in pursuance of directions from the Secretary of the Interior, the said lists, to the extent that they embraced lands east of Duluth, Minn., were canceled. (Record, p. 52.) July 29, 1897, the local officers at Duluth, in pursuance of instructions to that effect, approved by the Secretary of the Interior July 17, 1897 (Northern Pacific Railroad Company, 25 L. D., 47, 48; Record, p. 116), caused to be inserted in a newspaper of general circulation in the vicinity of the lands in controversy a notice to the effect that the said lands east of Duluth were subject to disposal at said Duluth land office under the public-land laws, which notice was published in said newspaper for a period of thirty days, and contained the following provision:

> All persons interested in or having claims to any of these lands * * * are hereby notified that they should present their claims to said lands at this [Duluth] office at the earliest possible date, in order to avoid conflicts which will necessarily arise through entries made under the general land laws. (Record, p. 429.)

It does not appear that the Northern Pacific Railroad Company presented any claim to any of the lands in controversy in response to said notice.

Of the lands in controversy it appears from Exhibit "A" to the bill of complaint (Record, pp. 17–25) that prior to January 1, 1898, patents had been issued for nine hundred and twenty (920) acres, more or less, and subsequent to January 1, 1898, and prior to July 1, 1898, patents were issued for about three thousand four hundred and twenty (3,420) acres; that prior to January 1, 1898, about five thousand two hundred and forty (5,240) acres were entered under the public-land laws; that the residue has been entered under the public-land laws since January 1, 1898; and that only two hundred and eighty (280) acres of the land were entered under laws requiring settlement. From the record it appears that the greater part of the lands was entered under the act of June 3, 1878 (20 Stat., 89), as amended by the act of August 1, 1892 (27 Stat., 348), commonly called the "timber and stone act." (Record, pp. 418, 427.)

February 28, 1898, the Secretary of the Interior, in view of the pendency of the aforesaid suit of *Doherty* v. *Northern Pacific Railroad Company*, in the circuit court of the United States for the district of Minnesota, issued an order (see 26 L. D., 265, 267) directing, among other things, that lands, including those in controversy, "be suspended from entry pending the judicial determination" of the question as to the location of the eastern terminus of the Northern Pacific land grant. Said order further stated that—

> While entry * * * will not be allowed during this suspension, yet, in all cases where entries have been heretofore allowed, the parties will be permitted to complete the same by making proof thereon, but the issue of patent will be suspended until such judicial determination.

April 16, 1900, this court rendered its decision in *Doherty* v. *Northern Pacific Railway Company* and in *United States* v. *Northern Pacific Railroad Company, supra.* July 12, 1900, in view of said decisions, the Commissioner of the General Land Office, by direction of the Secretary of the Interior, rescinded the cancellation of the indemnity selections made by the Northern Pacific Railroad Company embracing the land in question, and reinstated said selections upon the records; and further held that (Record, pp. 431–433, 491–492.)—

> The selections will now be duly considered upon their legality otherwise, and in connection with any conflicting claims or rights.

July 1, 1898, Congress incorporated in the sundry civil appropriation act (30 Stat., 595, 620, 621) the following provision, viz:

> That where, prior to January first, eighteen hundred and ninety-eight, the whole or any part of an odd-numbered section, in either the granted or indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of the grantee or its lawful successor is claimed to have attached by definite

location or selection, has been purchased directly from the United States, or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department, and where purchaser, settler, or claimant refuses to transfer his entry, as hereinafter provided, the railroad grantee, or its successor in interest, upon a proper relinquishment thereof, shall be entitled to select in lieu of the land relinquished an equal quantity of public lands, surveyed or unsurveyed, not mineral or reserved and not valuable for stone, iron, or coal, and free from valid adverse claim or not occupied by settlers at the time of such selection, situated within any State or Territory into which such railroad grant extends, and patents shall issue for the land so selected as though it had been originally granted; but all selections of unsurveyed lands shall be of odd-numbered sections, to be identified by the survey when made, and patent therefor shall issue to and in the name of the corporation surrendering the lands before mentioned, and such patents shall not issue until after the survey: *Provided, however*, That the Secretary of the Interior shall from time to time ascertain and, as soon as conveniently may be done, cause to be prepared and delivered to the said railroad grantee, or its successor in interest, a list or lists of the several tracts which have been purchased or settled upon or occupied as aforesaid, and are now claimed by said purchasers or occupants, their heirs or assigns, according to the smallest Government subdivisions. And all right, title, and interest of the said railroad grantee or its successor in interest in and to any of such tracts which the said railroad grantee or its successor in interest may relinquish hereunder shall revert to the United States, and such tracts shall be treated, under the laws thereof, in the same manner as if no rights thereto had ever vested in the said railroad grantee, and all qualified persons who have occupied and may be on said lands as herein provided, or who have purchased said lands in good faith as aforesaid, their heirs and assigns, shall be permitted to prove their titles to said lands according to law as if said grant had never been made; and upon such relinquishment said Northern Pacific Railroad Company or its lawful successor in interest may proceed to select, in the manner hereinbefore provided, lands in lieu of those relinquished, and patents shall issue therefor: *Provided further*, That the railroad grantee or its successor in interest shall accept the said list or lists so to be made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it, but it shall not be bound to relinquish lands sold or contracted by it, or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron, or coal: *And provided further*, That whenever any qualified settler shall in good faith make settlement, in pursuance of existing law, upon any odd-numbered sections of unsurveyed public lands within the said railroad grant to which the right of such railroad grantee or its successor in interest has attached, then, upon proof thereof satisfactory to the Secretary of the Interior and a due relinquishment of the prior railroad right, other lands may be selected in lieu thereof by said railroad grantee or its successor in interest, as hereinbefore provided, and patents shall issue therefor: *And provided further*, That nothing herein contained shall be construed as intended or having the effect to recognize the Northern Pacific Railway Company as the lawful successor of the Northern Pacific Railroad Company in the ownership of the lands granted by the United States to the Northern Pacific Railroad Company under and by virtue of foreclosure proceedings against said Northern Pacific Railroad Company in the courts of the United States; but the legal question whether the said Northern Pacific Railway Company is such lawful successor of the said Northern Pacific Railroad Company, should the question be raised, shall be determined wholly without reference to the provisions of this act, and nothing in this act shall be construed as enlarging the quantity of land which the said Northern Pacific Railroad Company is entitled to under the laws heretofore enacted: *And provided further*, That all qualified settlers, their heirs or assigns, who, prior to January first, eighteen hundred and ninety-eight, purchased or settled upon or claimed in good faith, under color of title or claim of right under any law of the United States or any ruling of the Interior Department, any part of any odd-numbered section in either the granted or indemnity limits of the land grant to the Northern Pacific Railroad Company to which the right of such grantee or its lawful successor is claimed to have attached by definite location or selection, may in lieu thereof

> transfer their claims to an equal quantity of public lands, surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron, or coal, and free from valid adverse claim, or not occupied by a settler at the time of such entry, situated in any State or Territory into which said railroad grant extends, and make proof therefor as in other cases provided; and in making such proof credit shall be given for the period of their *bona fide* residence and amount of their improvements upon their respective claims in the said granted or indemnity limits of the land grant to the said Northern Pacific Railroad Company the same as if made upon the tract to which the transfer is made; and before the Secretary of the Interior shall cause to be prepared and delivered to said railroad grantee or its successor in interest any list or lists of the several tracts which have been purchased or settled upon or occupied as hereinbefore provided, he shall notify the purchaser, settler, or claimant, his heirs or assigns, claiming against said railroad company, of his right to transfer his entry or claim, as herein provided, and shall give him or them option to take lieu lands for those claimed by him or them or hold his claim and allow the said railroad company to do so under the terms of this act.

The above provision is hereinafter referred to as the act of 1898.

July 13, 1898, the Northern Pacific Railway Company accepted the aforesaid provisions of the act of 1898 (Record, p. 758), which acceptance it duly filed in the Department of the Interior July 22, 1898

(Record, p. 759). Thereafter said railway company under the provisions of the act of 1898 filed relinquishments to lands selected by the Northern Pacific Railroad Company, and made lieu selections of other lands. *Northern Pacific Ry. Co.* (29 L. D., 316, 317, 318).

February 14, 1899, the Commissioner of the General Land Office, with the approval of the Secretary of the Interior, promulgated regulations, under the act of 1898, to facilitate the adjustment by the Land Department of conflicting claims to lands within the limits of the Northern Pacific Railroad land grant. (Record, pp. 737 to 758, inclusive; 28 L. D., 103, 118.) June 3, 1899, additional instructions were issued under said act with respect to the adjustment of conflicting claims, whereby paragraph 7 of the regulations was amended by the addition of a paragraph numbered 47. (28 L. D., 470, 471.)

By said paragraph 7 as amended the Secretary of the Interior held that the act does not apply to lands patented prior to its passage, but that it does apply to lands patented after its passage. October 12, 1899, the Secretary of the Interior again decided that the act is not operative as to lands patented prior to its passage. *Wasmund* v. *Northern Pacific R. R. Co.* (29 L. D., 224, 226).

November 21, 1899, in view of the opinion of the Attorney-General of February 6, 1897 (21 Op. Attys. Genl., 486), and the foreclosure proceedings referred to therein, the Secretary of the Interior held that the

Northern Pacific Railway Company should be recognized as the lawful successor in interest as to all lands within the limits of the grant provided for in the acts making grants to the Northern Pacific Railroad Company. *Northern Pacific Ry. Co.* (29 L. D., 316, 317).

By act of March 2, 1901 (31 Stat., 950), the provisions of the act of 1898 were—

> * * * extended and made applicable to all instances where lands in odd-numbered sections within the indemnity limits of the grant to said company were patented to settlers under the public-land laws in pursuance of applications presented to or proceedings initiated in the local land office at the time when the land was embraced in a pending indemnity selection made by said company in conformity with the regulations of the Land Department, which indemnity selection has not since been waived or abandoned.

June 5, 1899, upon a petition of the receivers of the Northern Pacific Railroad Company in the case of *Farmers' Loan and Trust Company* v. *Northern Pacific Railroad Company et al.*, the circuit court of the United States for the eastern district of Wisconsin entered an order directing Alfred L. Carey, special master, etc., to sell at public sale to the highest bidder all the lands granted by Congress to aid in the construction and equipment of the Northern Pacific railroad, and all the rights of said company, under its several land grants, "in any such lands lying within the State of Minnesota and State of North Dakota east of the Missouri River." (Record, pp. 449 *et seq.*) Thereafter, in pursuance of said order, said master sold at public sale, among other lands, the lands in controversy to the Northern Pacific Railway Company, which sale was subsequently confirmed by the court. September 22, 1899, and December 21, 1899, said special master and the receivers of the Northern Pacific Railroad Company, in pursuance of orders of the last-mentioned court, entered in the case last aforesaid, executed and delivered to the Northern Pacific Railway Company certain instruments purporting to convey to the latter company the lands in controversy. (Record, pp. 459–468, 478.) October 31, 1899, in pursuance of an order entered by the aforesaid court in the aforesaid case, the Northern Pacific Railroad Company and the receivers thereof executed and delivered to the Northern Pacific Railway Company an instrument in writing purporting to assign to the latter company all and every right, claim, etc., which said receivers or said railroad company, or both, might have, etc. (Record, p. 514.)

January 19, 1900, the Northern Pacific Railway Company executed and delivered to the complainants herein instruments purporting to convey to them the lands in controversy. (Record, pp. 499, 503.)

February 7, 1900, the Northern Pacific Railway Company transferred and assigned to the complainants all and every right, claim, and demand of every kind whatsoever which said company had acquired by virtue of the instruments of October 3, 1899, from the receivers of the Northern Pacific Railroad Company and from said railroad company to the Northern Pacific Railway Company, for injury, damage, or trespass theretofore committed upon the lands here in controversy. (Record, p. 516.)

April 17, 1900, this suit was instituted by the complainants against the defendants in the circuit court of the United States for the district of Minnesota. It is stated, among other things, in the bill of complaint that all of the lands "are valuable almost wholly on account of the timber growing thereon;" that they "were entered, located, and purchased * * * with almost exclusive reference to the value of the timber thereon, and that all of said parties [defendants] are threatening, proposing, and intending to cut and remove, or to cause to be cut and removed, the more valuable portions of the timber growing upon the said tracts * * * and, unless restrained by order of this [circuit] court, will cause such timber to be so cut and removed." (Record, p. 14.) The bill prays, among other things, that a decree be entered adjudging all the lands in controversy to belong to complainants; that they have the equitable title thereto; that the certificates of entry and patents be declared void; that such defendants as are invested with the legal title to any lands under patents be declared to hold the title as trustees for the complainants; that "the defendants and each of them may be perpetually restrained from cutting or removing from any of said lands any timber standing or lying thereon; and that the defendants may be similarly restrained during the pendency of this cause." (Record, p. 15.) Answers were filed, also replications thereto, evidence was taken, and the case was submitted August 3, 1901. (Record, p. 836.)

October 12, 1901, a decree was entered dismissing the bill of complaint, "without prejudice, to all lands except those to which patents have been issued." (Record, p. 847.) The complainants appealed to the circuit court of appeals of the United States for the eighth judicial circuit. May 14, 1902, the case was submitted to that court. June 16, 1902, that court, under section 6 of the act of March 3, 1891 (26 Stat., 826, 828), certified to this court two questions of law raised and presented by the record, concerning which it desired the instructions of this court for its proper decision, viz:

> 1. Is the act of July 1, 1898 (*vide* 30 Stat., pp. 620, 621), applicable to the determination of the rights of the parties to the 3,400 acres of land aforesaid which were patented to the appellees or their predecessors in interest prior to the adoption of the act of July 1, 1898?
>
> 2. Has the circuit court of the United States for the district of Minnesota, or any court, [of] jurisdiction as respects the lands in controversy entered subsequent to January 1, 1898, and for which the appellees hold final receipts or certificates, to adjudicate the rights of the parties to this action in respect to said lands in advance of the issuance of the patents therefor by the executive branch of the Government, or should the courts decline jurisdiction until the Government has divested itself of the legal title to the lands by the issuance and delivery of patents?

June 16, 1902, a writ of injunction was issued by said court of appeals commanding the defendants, and each of them, "to refrain from cutting or removing from any of the lands * * * any timber or wood standing or lying thereon, and from in any way changing the state and condition in which such lands and the timber thereon now are until the final decision of this case or the further order of this court." (Record, pp. 867, 868, 869.)

November, 1902, counsel for the United States filed a motion herein for leave to intervene and participate in the argument, for certification of the entire record to this court, and to advance the cause for hearing, said motion alleging as follows:

> 1. The cause presents several important and difficult questions of law, the determination of which by this court is necessary to enable the Interior Department to proceed with the adjustment of the Northern Pacific land grant and to properly administer subsequent laws relating to that grant.
>
> 2. There are several other law questions presented in the cause, the determination of which is as important to public and private interests and to future proceedings in the Interior Department as is the determination of the questions certified by the circuit court of appeals.
>
> 3. The cause presents several questions of law of general public interest which vitally affect the public domain of the United States, the Northern Pacific Railway Company, numerous purchasers from that company, and numerous

claimants adverse to that company and its purchasers.

4. The questions of law presented in said cause are of such a character and so vitally affect the United States and the administration of its public-land laws, including the land grant to the Northern Pacific Railway Company, that the United States should be heard by counsel before determination thereof by this court.

November, 1902, the solicitors for both complainants and defendants filed a motion herein to require the whole cause to be sent up from the circuit court of appeals and to advance the cause for hearing. December 1, 1902, this court granted said motions and assigned the cause for argument October 19, 1903. (Record, p. 870.)

The record shows, among other things, that when the Northern Pacific Railway Company accepted the provisions of the act of 1898 it had not acquired any rights to the lands in controversy from the Northern Pacific Railroad Company; that the Northern Pacific Railway Company sold said lands to the complainants after the passage of said act, but before any list or lists including said lands had been made thereunder and delivered by the Secretary of the Interior to the Northern Pacific Railroad Company or its successors in interest; that no part of the lands is covered by patents issued since July 1, 1898, and that none of the patented lands was applied for, entered, or patented under the provisions of the public-land laws requiring settlement.

The complainants base their claim of right to the lands in controversy upon the act of July 2, 1864 (13 Stat., 365); the joint resolution of May 31, 1870 (16 Stat., 378); the selection lists made and filed by the Northern Pacific Railroad Company, and the instruments purporting to convey said lands from the Northern Pacific Railroad Company to the Northern Pacific Railway Company and from the latter company to them.

Defendants claim to be entitled to said lands by virtue of entries made and patents issued under the public-land laws; instruments of conveyance and contracts to purchase executed by the entryman and the patentees and delivered to defendants; the provisions of the act of 1898; the acceptance of said act by the Northern Pacific Railway Company, and the acceptance by said railway company of benefits conferred by said act.

POSITION OF THE COMPLAINANTS IN RESPECT TO QUESTIONS RAISED AND PRESENTED BY THE RECORD.

The complainants contend,

First. That the lands involved were selected by the Northern Pacific Railroad Company between October 16, 1883, and November 10, 1883, under the provisions of the act of July 2, 1864 (13 Stat., 365), and the joint resolution of May 31, 1870 (16 Stat., 378), and in accordance with the rules and regulations of the Land Department then in force, hence were selected under the direction of the Secretary of the Interior; that by reason of such selection said lands at such time were withdrawn from the public domain and could not thereafter be disposed of under the public-land laws; hence the patents and entries relied upon by defendants are void.

Second. That the Northern Pacific Railroad Company acquired a vested right to the lands involved by reason of the selection lists made and filed by it in the year 1883 and revised in the years 1887, 1891, and 1893, notwithstanding the Secretary of the Interior has not approved the same, and notwithstanding the land grant of said company has not been finally adjusted by the land department. That such vested right now rests in the complainants by mesne conveyances from the Northern Pacific railroad Company, and is of such character that as to the patented lands they are entitled to a decree holding the defendants, who claim the same, trustees of the legal title; and as to the unpatented lands the court has jurisdiction to entertain this suit and to enter a decree establishing the equitable title to said lands in complainants, because (1) it was through an error of law on the part of the officers of the land department, viz, in holding the eastern terminus of the Northern Pacific Railroad land grant to be at Duluth, Minn., that said lands were offered for disposal under the public-land laws, and said entries were allowed and patents issued; (2) that contests in the land department between those claiming the lands under the railroad land grant and those claiming under the public-land laws have been concluded, and no function remains to be performed by the officers of the land department except to issue the patents, which function is merely ministerial in character; and (3) a multiplicity of suits will thereby be avoided.

Third. That the act of 1898 contemplates only such lands within the Northern Pacific land grant as had been settled upon in good faith by qualified settlers prior to January 1, 1898.

Fourth. That the act of 1898 does not apply to any lands patented prior to its passage.

Fifth. That the act of 1898 does not affect any lands claimed under the railroad grant unless and until a list or lists of the several tracts which have been purchased or settled upon or occupied and claimed by purchasers or occupants, their heirs or assigns, have been prepared by the Secretary of the Interior and delivered to the Northern Pacific Railroad Company or its successors in interest; and that only such lands are affected by said act as are included in such lists and remain unsold in the hands of the railroad or railway company at the time when the lists are delivered to the Northern Pacific Railroad Company or its successors in interest.

Sixth. That the act of 1898 does not obligate the Northern Pacific Railway Company to relinquish any lands.

Seventh. That the lands in controversy are not affected by said act because (a) there has been no acceptance of the same by the Northern Pacific Railroad Company; (b) when accepted by the Northern Pacific

Railway Company it had not succeeded to the interests of the Northern Pacific Railroad Company in said lands, and (c) that no list of said lands had been delivered to the Northern Pacific Railroad Company or its successors in interest prior to the purchase of the lands by complainants.

POSITION OF THE DEFENDANTS IN RESPECT TO QUESTIONS RAISED AND PRESENTED BY THE RECORD.

The defendants contend:

First. That in regard to the lands in question, which are unpatented, the court is without jurisdiction, for the reason that jurisdiction over the same is still with the Land Department.

Second. That in regard to the lands in question for which patents are outstanding, the court is without power to grant the relief asked by complainants, because (1) the decision of the Secretary of the Interior, in view of which the railroad indemnity selections were canceled and the patents issued, involved a question of fact, or law and fact, and not of law; and (2) that the complainants have not shown that they are entitled to any of the lands covered by the patents.

Third. That no part of the lands in controversy was ever legally segregated from the public domain by the indemnity selections of the Northern Pacific Railroad Company.

Fourth. That the Northern Pacific Railroad Company acquired no vested right to the lands in question by reason of the selection lists made and filed by it, because said lists were never approved by the Secretary of the Interior.

Fifth. That said lists are not valid, and that the Secretary of the Interior has the right to withhold his approval of the same, because (1) there was not attached thereto affidavits such as are mentioned in the circular of August 4, 1885 (4 L. D., 90); (2) the lands embraced in said lists were not shown to have been nearest the lands lost in the place limits; (3) the lands embraced in the lists are all upon one side of the railroad, while the lands lost, in lieu of which the selections were made, are upon the other side of the railroad; (4) the cost of surveying the lands covered by said lists has not been paid; (5) such losses had not been shown from the place limits of its grant as would entitle the Northern Pacific Railroad Company to select lands in the first indemnity limits; (6) that there was no showing to the effect that the Northern Pacific Railroad Company was entitled to any lands in the second indemnity limits; (7) that certain of the lands lost as bases for selection of lands in the indemnity lists were not lost at such times and under such circumstances as to make them valid bases for selection within the indemnity limits; (8) that the lands embraced therein were covered by a former withdrawal in favor of the Lake Superior and Mississippi Railroad Company under the act of May 5, 1864 (13 Stat., 64); (9) the grant to the Northern Pacific Railroad Company has not been adjusted by the Land Department.

Sixth. That the act of 1898 applies to all lands within the railroad grant, unpatented or patented, which had been *applied* for in good faith under any public-land laws prior to January 1, 1898.

Seventh. That to subject lands to the operation of the act of 1898 it is not necessary that there shall be prepared by the Secretary of the Interior and delivered to the Northern Pacific Railroad Company or its successors in interest a list or lists covering and designating the same.

Eighth. That because the Northern Pacific Railway Company accepted the provisions of the act of 1898, and thereafter applied for and received benefits conferred thereby, it is obligated to relinquish the lands in controversy.

THE HOLDINGS OF THE CIRCUIT COURT.

The circuit court in its decision (Record, pp. 617 to 646, inclusive; 130 Fed. Rep., 465-477) held as follows:

First. That with respect to the lands in question which had not been patented it was without jurisdiction to grant any relief.

Second. That the act of 1898 contemplated all lands within the Northern Pacific railroad land grant not sold or contracted by it to be sold prior to the passage of said act, not used or needed for railroad purposes, and not valuable for stone, iron, or coal, which had been applied for or settled upon in good faith, under any of the provisions of the public land laws, prior to January 1, 1898, by properly qualified persons, and that said act applied with equal force to such lands, whether unpatented or patented, and whether the patents were issued before or after its passage.

Third. That the act of 1898 does not exempt from its provisions lands sold by the Northern Pacific Railway Company after its passage and before list or lists of such lands have been delivered to the Northern Pacific Railroad Company or its successor in interest, and that all the lands involved were affected by the provisions of said act, notwithstanding they were sold by the Northern Pacific Railway Company before the service upon it or its predecessor in interest of a list or lists of such as prescribed by said act, and notwithstanding the Northern Pacific Railway Company had not succeeded to the claimed rights of the Northern Pacific Railroad Company in and to said lands at the time said railway company accepted the provisions of said act.

Fourth. That the Northern Pacific Railway Company by its acceptance of the act of 1898 became obligated to relinquish all lands contemplated by said act.

Fifth. That the duties of the Secretary of the Interior in administering said act are ministerial merely.

POSITION OF THE GOVERNMENT.

First. That the complainants have neither the equitable title to nor a vested right in any of the lands in controversy, for the reason that the only interest they have in the lands is based upon the proffer of indemnity selection lists made by the Northern Pacific Railroad Company, which have never been approved by the Secretary of the Interior, and were rejected by him solely on account of his erroneous decision whereby he held that the eastern terminus of the Northern Pacific land grant was at Duluth, Minn.; that since said erroneous decision they have, by the order of the Secretary of the Interior, been restored to the records of the

Land Department for consideration as to their validity in the process of the adjustment of said grant.

Second. That the courts are without jurisdiction in respect to the unpatented lands in controversy, for the reason that the legal title to the same is in the United States, and the Land Department has jurisdiction to determine the question whether the equitable title has passed from it.

Third. That the Land Department has jurisdiction in respect to the unpatented lands in controversy to pass upon and determine the validity of the indemnity selections and the validity of the entries in question, also to adjust conflicting claims to said lands; but in respect to the patented lands the Land Department has not jurisdiction to pass upon and determine the validity of said indemnity selections or to adjust conflicting claims to such lands, for the reason that it has lost such jurisdiction through mistake in allowing said lands to be patented.

Fourth. That upon the application of the Government in this suit the patents in question should be set aside and the jurisdiction of the Land Department over the lands be restored, to the end that it may be enabled to pass upon and determine the validity of the selections and to adjust conflicting claims to lands covered thereby.

Fifth. That the writ of injunction issued by the circuit court of appeals should be continued until all controversies with respect to the lands involved, whether in the courts or in the Land Department, are finally disposed of.

Sixth. That the act of July 1, 1898, does not apply to lands within the railroad land grant which had been patented prior to its passage; that the amendment of March 2, 1901, to the act of July 1, 1898, does not apply to any of the lands in controversy, for the reason that no part of the same has been patented under any law of the United States which requires settlement.

Seventh. That the act of 1898 applies to all unpatented lands within the limits of the railroad land grant which had been entered or purchased in good faith from the United States under any public land law prior to January 1, 1898, or had been settled upon in good faith prior to said date by a qualified settler; but that said act has no application to lands embraced in applications to enter or purchase, not preceded by settlement, made prior to January 1, 1898, which were pending unallowed at the date of its passage.

Eighth. That the contention of the complainants to the effect that said act does not obligate the Northern Pacific Railway Company to relinquish any lands within the Northern Pacific railroad land grant is untenable.

Ninth. That lands sold subsequent to the passage of the act of 1898, but before a list thereof has been prepared by the Secretary of the Interior and delivered to the railroad grantee or its successors in interest, are not exempt from the operation of the act.

Tenth. That the duties of the Secretary of the Interior in respect to the administration of the act are judicial in character, and not ministerial merely, as held by the circuit court.

ARGUMENT IN FAVOR OF GOVERNMENT'S CONTENTION.

EFFECT OF INTERVENTION.

By intervening herein the Government becomes and remains a party for all purposes of the suit, the same as though originally a party. Foster's Fed. Prac., 3d ed., vol. 1, sec. 201a, p. 444; Fletcher's Eq. Pl. Pr., sec. 81, p. 55; *French* v. *Gopin* (105 U. S., 509, 525); *Williams* v. *Morgan* (111 ib., 684, 696, 697); *Rice* v. *Dunham Water Co.* (91 Fed. Rep., 433). Therefore the Government may obtain relief which it could have obtained had it been a party to the suit when the same was instituted.

THE FORCE AND EFFECT OF THE INDEMNITY SELECTION LISTS.

By section 441 of the Revised Statutes "the Secretary of the Interior is charged with the supervision of public business relating to * * * the public lands." By section 161 he "is authorized to prescribe regulations not inconsistent with law for the government of his Department."

Section 446 provides that "there shall be in the Department of the Interior a Commissioner of the General Land Office," etc. Section 453 provides that this officer "shall perform, under the direction of the Secretary of the Interior, all executive duties appertaining to the surveying and sale of public lands of the United States, or in any wise respecting such public lands, and also such as relates to private land, and the issuing of patents for all grants of land under the authority of the Government." Section 2478 authorizes "the Commissioner of the General Land Office, under the direction of the Secretary of the Interior, * * * to enforce and carry into execution by appropriate regulations" the provisions of the law relating to the sale and disposal of the public lands.

Section 3 of the act of July 2, 1864 (13 Stat., 365, 367, 368), grants to the Northern Pacific Railroad Company, its successors and assigns—

> * * * every alternate section of public land not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption or other claims or rights at the time the line of said road is definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office, and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preempted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections: *Provided*, That if said route shall be found

> upon the line of any other railroad route to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: *Provided further*, That the railroad company receiving the previous grant of land may assign their interest to said "Northern Pacific Railroad Company," or may consolidate, confederate, and associate with said company upon the terms named in the first section of this act: *Provided further*, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road may be selected as above provided: *And provided further*, That the word "mineral" when it occurs in this act shall not be held to include iron or coal.

The joint resolution of May 31, 1870 (16 Stat., 378) in part is as follows:

> That the Northern Pacific Railroad Company be, and hereby is, authorized * * * to locate and construct, under the provisions and with the privileges, grants, and duties provided for in its act of incorporation, its main road to some point on Puget Sound via the valley of the Columbia River, with the right to locate and construct its branch from some convenient point on its main trunk line across the Cascade Mountains to Puget Sound; and in the event of there not being in any State or Territory in which

> said main line or branch may be located at the time of the final location thereof, the amount of lands per mile granted by Congress to said company within the limits prescribed by its charter, then said company shall be entitled, under the directions of the Secretary of the Interior, to receive so many sections of land belonging to the United States and designated by odd numbers in such State or Territory within ten miles on each side of said road beyond the limits described in said charter as will make up such deficiency on said main line or branch, except mineral and other lands as excepted in the charter of said company of eighteen hundred and sixty-four to the amount of the lands that have been granted, sold, reserved, occupied by homestead settlers, preempted, or otherwise disposed of subject to the passage of the act of July two, eighteen hundred and sixty-four.

The record shows that the railroad indemnity selections have never been approved by the Land Department, and only considered by it with respect to the question whether the lands embraced therein were within the limits of the Northern Pacific land grant; but these selections have not been considered since the decision of this court fixing the eastern terminus of the Northern Pacific land grant at Ashland, in the State of Wisconsin, with respect to the questions whether they were made in accordance with the provisions of the act of July 2, 1864 (13 Stat., 365), the joint resolution of May 31, 1870 (16 Stat., 378), and the rules and regulations of the Land Department governing the making of such selections. (Record, pp. 431, 432, 433.) These questions must, however, be considered by the Land Department in the orderly adjustment of the grant.

In view of the provision in section 3 of the act of July 2, 1864, that "other lands shall be selected by said company * * * under the direction of the Secretary of the Interior," and of the provision in the joint resolution of May 31, 1870, that "said company shall be entitled, under the directions of the Secretary of the Interior, to receive so many sections," etc., the Land Department has uniformly held that until an indemnity selection made by the Northern Pacific Railroad Company is approved by the Secretary of the Interior the title to the lands covered thereby remains in the Government, and that no right vests in the company until such approval is given. Northern Pacific Railroad Company (2 L. D., 820, 821); *Same* v. *Miller* (7 Ib., 100, 123, 124); *Same* v. *Walters* (13 Ib., 230, 233, 235, 236); *Same* v. *Blain* (27 Ib., 361, 363); *Same* v. *Fly* (27 Ib, 464, 466); *Meister* v. *St. P., M. & M. R. Co.* (14 Ib., 624, 626); *Dunnigan* v. *N. P. Rd. Co.* (27 Ib., 467, 468). The first ruling in this respect was made in May, 1883, and has been adhered to ever since. It should not therefore be overthrown by the court, unless plainly erroneous. *Hewitt* v. *Schultz* (180 U. S., 139, 156, 157); *Hawley* v. *Diller* (178 U. S., 476, 488). In passing upon other acts of Congress granting lands to other railroads and to the different States, which contain provisions of similar import to those just referred to, this court has held that the ruling of the Land Department in the respect named is correct. *Ryan* v.

Railroad Company (99 U. S., 382, 386, 387, 388); *Sioux City & St. Paul Rd. Co.* v. *Chicago, Milwaukee & St. Paul Railway Co.* (117 U. S., 406, 408); *Wisconsin Central Railroad Co.* v. *Price County* (133 U. S., 496, 511, 512, 513, 514); *United States* v. *M., K. & T. Railway Co.* (141 U. S., 358, 373, 374, 375); *Southern Pacific Railroad Co.* v. *Bell* (183 U. S., 675, 690); *Clark* v. *Herrington* (186 U. S., 206, 209).

The foregoing and the following decisions of this court, viz, *United States* v. *McDaniel* (7 Pet., 1, 14, 15); *Williams* v. *United States* (138 U. S., 514, 524); *Knight* v. *United States Land Association* (142 ib., 161, 177, 181); *Catholic Bishop of Nesqually* v. *Gibbon* (158 ib., 155, 167); *Caha* v. *United States* (152 ib., 211, 222); *Kansas Pacific Rd. Co.* v. *Atchison, etc., Rd. Co* (112 ib., 414, 421); *Barney* v. *Winona, etc., Rd. Co.* (117 ib., 228, 232); *New Orleans* v. *Paine* (147 ib., 261, 267); *Michigan Land and Lumber Co.* v. *Rust* (168 ib., 589, 592, 594, 595); *Northern Pacific Rd. Co.* v. *Musser-Sauntry Co.* (168 U. S., 604, 611); *Cosmos Exploration Co.* v. *Gray Eagle Oil Co.* (190 U. S., 301, 308, 309, 312), and *Riverside Oil Co.* v. *Hitchcock* (190 ib., 316, 324), settle beyond controversy the following propositions:

1. Upon the Land Department is imposed the duty of administering the Northern Pacific railroad land grant, and it is clothed with power and authority to prescribe rules and regulations to that end, which necessarily includes the manner of making indemnity selections by said company, its successors and assigns.

2. It is the duty of the Land Department to pass upon and determine all questions touching the validity of

indemnity selections, including the adjudication of adverse claims made for the lands selected, and if found to be legal in all respects, to approve the selections; otherwise to reject them.

3. No title passes from the Government, nor does any vested right attach to lands within a Northern Pacific railroad indemnity selection unless and until such selection receives the approval of the Secretary of the Interior.

4. When the indemnity selections are approved, the *equitable* title to the lands embraced therein passes under the grant.

5. The legal title does not pass from the Government until patent has issued.

The contention of the complainants to the effect that the Northern Pacific Railroad Company acquired a vested right to the lands in question by reason of its indemnity selections is based upon the assumption that the selections are in all respects valid, and that although valid the Secretary of the Interior has arbitrarily refused to approve them. This assumption is not supported by the record. On the contrary, it shows that the validity of the selections has not been passed upon since their restoration to the records of the Land Department, and that this Department is now considering them in connection with the adjustment of the railroad land grant. The Government does not claim for the Secretary of the Interior the power arbitrarily to refuse to approve an indemnity selection made by the railroad company, nor does it claim he can defeat such selection by failure or neglect to act thereon.

It is the law (see *Williams* v. *United States*, 138 U. S., 514, 524; *Brown* v. *Hitchcock*, 173 ib., 473, 478) and has been so recognized by the Secretary of the Interior, that his authority "over the selection of indemnity lands by the company is not to be exercised arbitrarily." *Dunnigan* v. *Northern Pacific R. R. Co.* (27 L. D., 467, 469). The Government does claim, however, that the Secretary of the Interior has not finally passed upon these selections; that he must act upon them and determine all questions affecting their validity before the matters complained of can be carried into the courts by any person claiming an interest in the lands by reason of the indemnity selections. *New Orleans* v. *Paine* (147 U. S., 261, 264); *Germania Iron Co.* v. *United States* (165 U. S., 379, 383, 384); *Brown* v. *Hitchcock* (173 U. S., 475, 477). That until approved, there are no selections in fact, "only preliminary proceedings taken for that purpose" (*Wisconsin Central Railroad Co.* v. *Price County*, *supra*, p. 512); that the railroad company can not decide the question of the validity of the selections, and that the mere proffer of selections by it can not create even an equitable title to the lands embraced therein *Cosmos Co.* v. *Gray Eagle Oil Co.* (190 U. S., 301, 312).

The record shows that when this court, by its decision in *Doherty* v. *Northern Pacific Rwy. Co.*, established the eastern terminus of the Northern Pacific Railroad land grant at Ashland, Wis., the Secretary of the Interior restored the indemnity selections in question to the records of the Land Department, to be considered and passed upon in the adjustment of said land grant; that he has not refused to approve said selections, and that he has not failed to act upon them. But even though the Secretary of the Interior had failed, neglected, or refused to *act* upon the selections in question, such inaction would not give the courts jurisdiction to pass upon and determine their validity in the first instance. This question must necessarily be determined in the process of the adjustment of the land grant by the Land Department. Before they can be lawfully approved, the Secretary of the Interior must be satisfied that they conform in all respects to the requirements of the provisions of the acts granting lands to the Northern Pacific Railroad Company and the rules and regulations of the Land Department governing indemnity selections. He must also determine, where there are conflicting claims to the lands selected, whether such claims are subject to adjustment under the provisions of the act of July 1, 1898, or take such other and further action as may be necessary in adjusting the rights of the conflicting claimants to the lands selected. Should the Secretary of the Interior fail, neglect, or refuse to act in respect to such selection, the remedy for such inaction, if any there be, is a suit in court for a writ of mandamus against the Secretary to compel him to *act.*

The decisions of this court in *Duluth & Iron Range R. R. Co.* v. *Roy* (173 U. S., 587) and in *Wright* v. *Roseberry* (121 U. S., 488), cited by complainants (brief, p. 91), are in no way applicable to the unpatented lands in question and, as will be urged hereafter, are not applicable to the patented lands. In *Duluth & Iron Range R. R. Co.* v. *Roy* patent had issued to the State of Minnesota for certain lands under the swamp-land act during the pendency of a contest under the homestead law for the same land, thereby ending the jurisdiction of the Land Department. In *Wright* v. *Roseberry* the facts were that the Secretary of the Interior had failed or neglected to make a designation of lands claimed by the State of California under the swamp-land act, which lands had been classified as swamp lands by the surveyor-general of the State and such classification had been approved by the Commissioner of the General-Land Office. This court held that the grant provided for by the act was one *in præsenti*, and that the rights of the State to the lands involved could not be defeated by the inaction of the Secretary. The grant of indemnity lands to the Northern Pacific Railroad Company is not one *in præsenti*. It is simply a promise on the part of the Government to give title to the said company upon the happening of certain contingencies, viz, that the grant, upon location, is found deficient and that the proffered indemnity selections made on account thereof receive the approval of the Secretary of the Interior. Until this is done the railroad company has not and can not have any legal interest in any indemnity lands contemplated by the grant which can be enforced in the courts. *Wisconsin Central R. R. Co.* v. *Price County* (133 U. S., 496, 512). The Secretary of the Interior in the case of *Wright* v. *Roseberry* failed or neglected to *act* in respect to the lands involved. In this case he has not failed or neglected to act.

INQUIRY IN RESPECT TO EQUITABLE RIGHTS TO PUBLIC LANDS.

In respect to equitable rights to public lands this court has held:

1. That until the legal title passes from the Government inquiry as to all equitable rights comes within the cognizance of the Land Department. *Brown* v. *Hitchcock* (173 U. S., 473, 476). But until the title has passed to an individual the equities subject to which he holds it can not be enforced in the courts. *Marquez* v. *Frisbie* (101 U. S., 473, 475.)

2. Until the legal title to public land passes from the Government the Land Department has jurisdiction to determine the question whether or not the equitable title has passed. *Michigan Land and Lumber Co.* v. *Rust* (168 U. S., 589, 593); *Hawley* v. *Diller* (178 U. S., 476, 488, 489, 490). But pending the determination of this question by the Land Department the courts will not pass upon the same in controversies between individuals, but will leave it to be determined by the Land Department. *Litchfield* v. *Register and Receiver* (9 Wall., 575, 578); *United States* v. *Schurz* (102 U. S., 378, 396); *New Orleans* v. *Paine* (147 U. S., 261, 264); *Brown* v. *Hitchcock* (173 U. S., 473, 477); *Cosmos Co.* v. *Gray Eagle Co.* (190 U. S., 301, 308).

3. After the Land Department has passed upon all disputed questions of fact and finally determined that the equitable title to public lands has passed from the Government, but not before, the courts may inquire into and determine controversies between individuals in respect to the validity of such equitable title, together

with individual rights claimed thereunder, and will accept the findings of the Land Department as conclusive upon all questions of fact. *Moore* v. *Robbins* (96 U. S., 530, 534); *Marquez* v. *Frisbie* (101 U. S., 473, 476); *Johnson* v. *Drew* (171 U. S., 92, 99); *Clark* v. *Herrington* (186 U. S., 206, 210, 211).

THE UNPATENTED LANDS.

Within the principles as above set forth the courts are without jurisdiction in this case, so far as the unpatented lands are concerned, to grant the relief prayed for by the complainants for the reasons: (1) The legal title is still in the United States; (2) the Land Department has jurisdiction to determine the question whether or not the equitable title has passed; (3) the record shows that the Land Department is now considering this question and has not made a finding upon any questions of fact which may be involved.

The decisions of this court heretofore cited fully sustain the Government's contentions that the Land Department is clothed with plenary power (1) to pass upon and determine the validity of the railroad indemnity selections in question to the extent that they embrace unpatented lands; (2) to adjust conflicting claims to such lands, including the entries in question; (3) to set aside the entries if found to be illegal, and that the courts will not take cognizance of disputes concerning the lands until the authority of the Land Department over the same has ended. The contention of complainants to the contrary is based upon the conceded fact that the unpatented lands have been entered under the public-land laws and were allowed to be entered because of an erroneous decision of the Secretary of the Interior, which decision they claim involved a question of law only; the alleged fact that the Land Department has finally passed upon the claims of those who assert rights to the unpatented lands under the railroad land grant as well as those who assert rights to the same under the public-land laws, and the further alleged fact that the Land Department has decided that patents shall issue upon the entries. In addition they urge that a court of equity should assume jurisdiction in this case in order to prevent a multiplicity of suits, and that unless it does so the lands will be denuded of their timber and thereby be despoiled of their principal value.

It is not a fact, as alleged by complainants, that the Land Department has passed upon the asserted rights of the respective parties to the entered lands, nor has it decided that patents shall issue upon the entries. (Record, pp. 431, 432, 433; Northern Pacific R. R. Co., 26 L. D., 265, 266, 267.) Until it does finally pass upon the asserted rights of such parties to these lands and decides to issue patents therefor, no vested rights attach thereto. While it is true that when the right to a patent once becomes vested, it is equivalent, so far as the Government is concerned, to a patent actually issued (*Barney* v. *Dolph*, 97 U. S., 652, 656; *Stark* v. *Starrs*, 6 Wall., 402, 418; *Simmons* v. *Waggoner*, 101 U. S., 260, 261), it is equally true that the right to a patent to public land does not become *vested* "as *against the United States* until all the prerequisites for the acquisition of the title have been complied with" (*Shepley* v. *Cowan*, 91 U. S., 330, 338); nor until conflicting claims, if any, to the lands have been finally determined by the Land Department. (*Cosmos Co.* v. *Gray Eagle Co.*, 190 U. S., 301, 311, 312; *Hawley* v. *Diller*, 178 U. S., 476, 488, 490, 491; *Brown* v. *Hitchcock*, 173 U. S., 473, 478; *Michigan Land and Lumber Co.* v. *Rust*, 168 U. S., 589, 593, 594; *Knight* v. *U. S. Land Association*, 142 U. S., 161, 176, 177, 178.) It is settled law that the Land Department retains jurisdiction in respect to public lands until patent has issued, and that the Secretary of the Interior, at any time before the issuance of patent, "may review, reverse, amend, annul, or affirm" any proceeding in the Land Department looking to the acquisition of public lands. See *United States* v. *Schurz* (102 U. S., 396, 401, 402); *Knight* v. *U. S. Land Association*, *supra*.

THE ERRONEOUS DECISION OF THE SECRETARY OF THE INTERIOR.

Whether the erroneous decision of the Secretary of the Interior with respect to the eastern terminus of the Northern Pacific land grant involved merely a question of law, a mixed question of law and fact, or only of fact, the entries in question made because of such erroneous decision are, nevertheless, subject to inquiry by the Land Department and may be and should be canceled by it if found to be illegal. *Marquez* v. *Frisbie* (101 U.S., 473, 475, 476); *United States* v. *Schurz* (*supra*,

pp. 401, 402); *Knight* v. *U. S. Land Association* (142 U. S., 161, 177, 178, 182); *New Orleans* v. *Paine* (147 U. S., 261, 266, 267); *Michigan Land and Lumber Co.* v. *Rust* (168 U. S., 589, 592, 593, 594, 595); *Beley* v. *Naphtaly* (169 U. S., 353, 364); *Hawley* v. *Diller* (178 U. S., 476, 488); *Brown* v. *Hitchcock* (173 U. S., 473, 476, 477, 478).

AUTHORITIES CITED BY COMPLAINANTS NOT APPLICABLE.

The complainants in support of their contention, to the effect that the court has jurisdiction to pass upon the claimed rights of the respective parties to the unpatented lands, refer to and rely upon the decisions of this court in the following cases, viz: *Berthold* v. *McDonald* (22 How., 334); *Witherspoon* v. *Duncan* (4 Wall., 210); *Johnson* v. *Towsley* (13 Wall., 72); *Moore* v. *Robbins* (96 U. S., 530); *Cornelius* v. *Kessel* (128 U. S., 456); *Orchard* v. *Alexander* and *Pierce* v. *Frace* (157 U. S., 372); *Bockfinger* v. *Foster* (190 U. S., 116); and *Cosmos Co.* v. *Gray Eagle Co.* (190 U. S., 301). In *Berthold* v. *McDonald*, a special tribunal had been created by Congress to pass upon conflicting claims to certain lands. The statute made the decision of that tribunal conclusive as against the Government, and its action divested the Government of the legal title as effectually as if patent had issued. That tribunal had by mistake awarded the lands involved to antagonistic claimants. Upon a suit between these claimants, involving the lands, the court held that it had jurisdiction to review the action of the special tribunal, because each party had a good title as against the United

States, and the equities of the parties so far as they depended upon the action of the special tribunal, were equal and balanced each other. In *Witherspoon* v. *Duncan (supra)*, the court simply held that when entry is made of public land and certificate given, such land is segregated from the public domain and is subject to taxation. In the decision the court states (see p. 219) the patent can not be "withheld *if the original entry was lawful.*" In *Johnson* v. *Towsley* a contest to the land involved between Johnson and Towsley had been finally decided by the Secretary of the Interior in favor of Johnson and patent had been issued to him for the land, thus terminating the jurisdiction of the Land Department over the same. Subsequent to the issuance of the patent Towsley brought suit against Johnson for the land. The trial court decided in favor of Towsley. On appeal by Johnson this court affirmed the decision of the lower court upon the ground that Towsley's rights to the lands were superior to Johnson's and that the Land Department should have issued the patent to the former. In *Moore* v. *Robbins* it appeared that the Government had sold the land in question to two different parties and had received the money from each. A contest between the respective parties had been instituted for the land in the Land Department and been finally decided by the Secretary of the Interior, but no patent issued for the land. Says the court in deciding the case (see p. 534):

"It is not *denied*, however, that to one or the other of the parties now before the court this equitable title belongs, and it is the purpose of the present suit to decide that question." The court held (see p. 535) that a court of equity had jurisdiction to correct the mistakes of the land officers "in all cases *where it is clear* that those officers have, by a mistake of the law, given to one man the land which, on the *undisputed facts*, belonged to *another*." In *Cornelius* v. *Kessel* patent had issued to the land involved. *Orchard* v. *Alexander* and *Pierce* v. *Frace* came to this court upon writs of error to the supreme court of the State of Washington. The action in each case was for the *possession* of lands the legal title to which was in the Government. The law of the State authorized such an action. The question in respect to title was not involved. The question in respect to jurisdiction does not seem to have been raised in this court. It appears also that contests had been instituted before the Land Department for the lands involved by the respective parties, and these contests had been *finally* determined by that department. In *Bockfinger* v. *Foster* this court, at page 126, among other things, says:

> The courts will not interfere with the Land Department in its control and disposal of the public lands, under the legislation of Congress, so long as the title in any essential sense remains in the United States.

In *Cosmos Co.* v. *Gray Eagle Co.* this court refused to pass upon the asserted rights of a claimant to public lands in advance of a final decision by the Land Department in respect to such right

In *Marquez* v. *Frisbie* (101 U. S., 473) this court, after referring to *Johnson* v. *Towsley*, says (p. 475):

> We did not deny the right of the courts to deal with the possession of the land prior to the issue of the patent, or to enforce contracts between the parties concerning the land. But it is impossible thus to transfer a title which is yet in the United States.

In the same case, in commenting upon *Moore* v. *Robbins*, it is stated, among other things (p. 476):

> But if it can be made entirely plain to a court of equity that on facts about which there is no dispute or no reasonable doubt those officers [meaning the officers of the Land Department] have, by mistake of the law, deprived a man of his rights it will give relief.

It can not be said in this case that to one or the other of the parties now before the court the equitable title to the lands involved belongs, as the Land Department has not passed upon the conflicting claims to these lands. Nor can it be said that there are no disputed questions of fact. Further, upon consideration of the conflicting claims to these lands the Land Department may, for good and sufficient reasons, cancel the entries in question, also the railroad indemnity selections involved.

MULTIPLICITY OF SUITS.

In regard to the claim of the complainants to the effect that the court should take jurisdiction in order to avoid a multiplicity of suits, a sufficient answer thereto is found in *Brown* v. *Hitchcock*, *supra*, where a similar claim was urged before this court (see p. 478), but without success.

IRREPARABLE DAMAGE.

As to the contention that unless the court takes jurisdiction in respect to the unpatented lands they will be denuded of their timber and rendered valueless, it is conceded by the Government and urged by it that the court has power to and should continue the present injunction as to all the lands in controversy pending action by the Land Department upon the indemnity selections and the adjustment of conflicting claims therewith. The question of continuing the injunction will be more fully discussed hereafter.

JURISDICTION IN RESPECT TO THE PATENTED LANDS.

It is established law that the issuance of patent terminates the jurisdiction of the Land Department over public lands and exhausts its power to examine and decide conflicting claims thereto. *United States* v. *Schurz* (102 U. S., 378, 401, 402, 403); *Germania Iron Co.* v. *United States* (165 U. S., 379, 383). The Land Department therefore has lost jurisdiction to pass upon and determine the validity of the selections to the extent that they embrace patented lands. It does not follow, however, that the judiciary has power to pass upon and determine the validity of said railroad indemnity selections or to determine conflicting claims to such patented lands. Where conflicting claims depend upon questions of fact, the determination of which has been committed to the Land Department, "it and not a court of equity is the tribunal intrusted by the law with jurisdiction over such matters, and the latter may not inquire what ought to have been the determination of the former, but whether it has been wrongfully deprived of the power to make such determination." *Germania Iron Co.* v *United States, supra.*

The validity of the railroad indemnity selections depends upon the existence of certain facts, among others the following, viz: (1) That there is a deficiency within the place limits of the grant; (2) that such deficiency has not already been satisfied; and that as to lands within the *second* indemnity belt, (a) that the grant within the State of Minnesota can not be satisfied from land within the first indemnity belt, and (b) that there is necessity for resort to further selections in the satisfaction of the lands lost to the grant within said State between the date of the passage of the original granting act of July 2, 1864, and the date of the filing of the map showing the definite location of the road. The determination of these facts has been committed by Congress to the Land Department. It has not determined them. *Hewitt* v. *Schultz* (180 U. S., 139, 157, 158); *Northern Pacific R. R. Co.* (25 L. D., 511, 513, 514); *Northern Pacific R. R. Co.* v. *Streib* (26 L. D., 589, 591). In respect to the patented lands, it has been deprived of the power to do so. It is not the function of the court to pass upon these facts, but it can restore to the Land Department the power to do so. *Germania Iron Co.* v. *United States* (*supra*). It is settled law that where jurisdiction of the Land Department over public lands has been lost through mistake in the issuance of patent, and it appears that the Government is under an obligation to any party in respect to the land so patented, the courts will restore such lost jurisdiction. *Germania Iron Co.* v. *United States* (*supra*); *San Pedro and Cañon Del Agua Co.* v. *United States* (146 U. S., 120, 132, 133).

It is unquestioned that the patents were issued by mistake. There is an obligation resting upon the Land Department, charged with the administration of the grant, to pass upon and determine the validity of the railroad indemnity selections in respect to all the lands covered thereby. If the selections are found to be legal in all respects the Government is obliged to convey the lands selected to the Northern Pacific Railroad Company, its successors or assigns, or other lands of equal quantity if the conflicting claims thereto be held to be subject to adjustment under the act of July 1, 1898, and the individual claimants thereto elect to retain the same.

Complainants will no doubt urge that within the ruling set forth in *Duluth and Iron Range R. R. Co.* v. *Roy* (173 U. S., 587) the courts have jurisdiction in respect to the patented lands to pass upon and determine the asserted rights of the respective claimants thereto. In that case the United States made no application to set aside the patent there in question and to restore the lost jurisdiction of the Land Department over the land embraced therein, nor was the United States a party to the suit. Had the Government been a party to that suit and asked that the patent in question be set aside and the lost jurisdiction over the land involved be restored, this court would have undoubtedly applied the doctrine set forth in *Germania Iron Co.* v. *United States* (165 U. S., 379) and granted the Government's request. In the case just cited, this court, at pages 383 and 384, speaking through Mr. Justice Brewer, says, among other things:

> By inadvertence and mistake a patent in this case has been issued, and the effect of such issue is to transfer the legal title and remove from the jurisdiction of the Land Department the inquiry into and consideration of such disputed questions of fact.
>
> The contention of the appellants is substantially that the courts must consider and determine those disputed questions of fact and exercise a jurisdiction not committed to them before they restore to the Land Department the jurisdiction of which it has been wrongfully deprived. But why should the courts be called upon to consider and determine questions of fact and after a determination adversely to the patentee relegate the matter for reexamination and determination in the Land Department? Is not the duty of the court fully performed when it ascertains that through such inadvertence and mistake the department which has jurisdiction over such matters has been deprived thereof? It restores to such department its lost jurisdiction and leaves to the tribunal designated by Congress the full power to discharge the duties conferred upon it. It is true that it does not affir-

> matively appear in this case that the patentee was not entitled equitably to the land or that the contestants had any superior right thereto, but his rights and their rights depend upon questions of fact—such as priority of application, etc.—the determination of which by act of Congress has been committed to the Land Department. It and not a court of equity is the tribunal intrusted by the law with jurisdiction over such matters, and the latter may not inquire what ought to have been the determination of the former, but whether it has been wrongfully deprived of the power to make such determination.

To apply the doctrine laid down in *Duluth & Iron Range R. R. Co.* v. *Roy* to the patented lands in this case it would be necessary for the court to hold that it has authority in advance of the action of the Land Department to determine all questions of law and all disputed questions of fact involved in the conflicting claims to such lands, which includes an inquiry into the question whether or not there is a deficiency within the place and within the first indemnity limits of the Northern Pacific land grant.

THE INJUNCTION SHOULD BE CONTINUED.

The record shows that the chief value of the lands is in the timber thereon. If it be removed the lands are of little or no value. The Government has the legal title to the unpatented lands. The legal title to the patented lands passed from it through the mistake of the Land Department. The equitable title to all the lands is in dispute. For these reasons the injunction issued restraining the defendants from cutting and removing timber from the lands should, upon the application of the Government, be continued, to the end that the timber be preserved from destruction, pending the proceedings in the Land Department. *Erhardt* v. *Boaro et al* (113 U. S., 537, 538); *Lanier* v. *Allison* (31 Fed. Rep., 100, 102); High on Injunctions, 3d ed., vol. 1, sec. 671, p. 518.

THE ACT OF JULY 1, 1898.

LANDS PATENTED PRIOR TO ITS PASSAGE.

This is an adjustment act designed for the speedy settlement by the Land Department of controversies affecting lands within the Northern Pacific railroad land grant, between certain classes of claimants and the Northern Pacific Railroad Company or its lawful successors in interest. As construed by the Land Department it does not apply to lands within the Northern Pacific railroad land grant, which had been patented prior to its passage. (28 L. D., 103, 106, 471; 29 L. D., 224, 226.) As claimed by the defendants and as construed by the circuit court, it does include lands patented prior to its passage. (Record, pp. 841, 842, 843, 844; *Humbird* v. *Avery*, 110 Fed. Rep., 465, 469, 470, 471.)

The construction adopted by the Land Department confines the act to controversies pending before it at the time of its passage. The construction contended for by the defendants, and which was adopted by the circuit court, would extend the provisions of the act to controversies not pending before the Land Department, but which had been finally passed upon by it. By this latter construction power is conferred upon the Land Department to reopen controversies theretofore settled, and an opportunity is given to the Northern Pacific Railroad Company, its successors and assigns, to receive indemnity lands, under the special provisions of said act, in cases in which it had theretofore been defeated in the Land Department. This special right of indemnity selection given by the act of 1898 is a more extensive right than the general indemnity privileges conferred upon the railroad grantee by the granting act of July 2, 1864 (*supra*), and the resolution of May 31, 1870 (*supra*). It is not confined to definite limits or specific sections, but extends to *any* lands, whether surveyed or unsurveyed, not mineral in character, in any State into or through which the line of said railroad extends.

In the absence of a clearly expressed intention it should not be presumed that Congress intended the act should be so far-reaching in its operation. Such an intent is not clearly expressed, but, on the contrary, the act taken as a whole, together with the amendatory act of March 2, 1901, strongly indicates that patented lands or those included in settled controversies were not intended to be embraced in its provisions. The enacting clause provides for the relinquishment by the railroad grantee, or its successor in interest, of tracts claimed to have been purchased or settled upon in good faith by qualified persons. In the first proviso it is declared:

> That all qualified persons who have occupied and may be on said lands as herein provided, or who have purchased said lands as herein provided, or who have purchased said lands in good faith as aforesaid, their heirs and assigns, shall be permitted to prove their titles to said lands according to law, as if said grant had never been made.

The above provision manifestly refers to and includes all claimants.

The last proviso contains the following:

> All qualified settlers, their heirs or assigns, who * * * *purchased* or settled upon or claimed in good faith * * * any part of an odd-numbered section * * * may in lieu thereof *transfer their claims* to an equal quantity of public lands * * * and *make proof* thereof as in other cases provided, and * * * credit shall be given for the period of their *bona fide* residence * * * the same as if made upon the tract to which the transfer is made.

For what purpose is proof required of claimants, whether they elect to retain the lands claimed or take other lands in lieu thereof, unless it is to enable the Land Department to determine whether or not patents shall issue? And why in making proof in any case should the question of residence be taken into consideration if that question has already been passed upon by patent theretofore issued?

It would seem, then, from the provisions just referred to that the act was not intended to apply to lands which had been patented prior to its passage. This view is strengthened by the wording of the amendatory act of March 2, 1901 (31 Stat., 950), which extends the provisions of the act of July 1, 1898, only to such lands as had in certain cases been *patented* to "settlers."

The circuit court in its opinion, among other things, says: "The act refers to conditions existing at the time of its passage." (Record, p. 841; *Humbird* v. *Avery*; 110 Fed. Rep. 465, 468.) This is manifestly correct and is in harmony with and sustains the view of the Land Department to the effect that the act only operates on lands involved in controversies pending before the Land Department at the time of its passage.

The only words employed in the enacting clause of the statute which lend any color to the claim that patented lands were meant to be included within its provisions are "purchased" and "purchaser." In a technical sense "purchased," when applied to public lands, means the possession of the legal title by the owner. In the ordinary and popular acceptation of the term it means acquisition by contract. *Kohl* v. *United States* (91 U. S., 367, 374). When employed in statutes pertaining to the public domain the words "purchased" and "purchasers" are synonymous with and equivalent to the words "entered" and entrymen." A person who has fully complied with the provisions of the land laws, and has paid the purchase price for a given tract has "purchased" the same, and is treated as the purchaser. *Carroll* v. *Safford* (3 How., 441, 460 461, 462, 463); *Witherspoon* v. *Duncan* (4 Wall., 210, 218); *Barney* v. *Dolph* (97 U. S., 652, 656); *Simmons* v. *Wagner* (101 U. S., 260, 261, 262).

The construction adopted by the circuit court seems to be based upon the assumption that the duties imposed upon the Secretary of the Interior by the act are ministerial merely. In this connection the court says:

> The act does not provide for any examination or decision whatever by the Land Department of the merits of any claims to the lands. The acts required to be done by the Secretary of the Interior are merely ministerial—first, to offer the option to the individual claimants, and, if the land is by him relinquished, to require such instrument as will make the relinquishment effectual. If he refuses to relinquish, then the Secretary's duty is to place the land on the list respecting which relinquishment is to be required of and can not be refused by the railroad claimant, the lists so furnished being conclusive.

(Record, p. 843; *Humbird* v. *Avery, supra*, p. 470.)

The wording of the statute clearly shows that the Secretary of the Interior must determine, in the first instance, whether the individual claim in conflict with that made under the grant is within the classes described in the act, and whether each of the conflicting claims is such that, in the absence of the other, it might be perfected into full title. The determination of these questions, or either of them, involves an investigation of facts and an examination and construction of laws.

The duties, therefore, required to be performed by the Secretary of the Interior in the administration of the act are judicial and not ministerial. A ministerial duty "is a simple, definite duty, arising under conditions admitted or proved to exist and imposed by law." *Mississippi* v. *Johnson* (4 Wall., 475, 498); *Gaines* v. *Thompson* (7 Wall., 347, 353). "All acts or duties depending upon a decision of a question of law or the ascertainment of matters of fact by the officer or tribunal charged with the duty are considered to be judicial." Merrill on Mandamus (sections 31, 32). *Seymour* v. *United States* (2 App. D. C., 247); *Decatur* v. *Paulding* (14 Pet., 497, 515); *United States* v. *Seaman* (17 How., 225, 230); *United States* v. *Lynch* (137 U. S., 280, 285, 286); *Redfield* v. *Windom* (ib., 636, 642, 643, 644); *Riverside Oil Co.* v. *Hitchcock* (190 U. S., 316, 323, 324, 325).

It may be that the conflicting claims of the entrymen, whose entries were patented prior to the passage of the act of 1898, and the railway company would be subject to adjustment under the provisions of said act, under the views of the Government above expressed, if those patents are set aside and the jurisdiction over the land embraced in such entries restored to the Government.

UNPATENTED LANDS AFFECTED BY THE ACT.

The complainants contend that the only lands affected by the act are those which have been *settled* upon in good faith by a *qualified settler*. The defendants insist that the act contemplates all lands applied for under the public-land laws, in which there was any conflict with the claims of the railroad company. The circuit court held that the language of the act "is broad enough to include all purchasers from the United States, under any law or ruling of the Land Department." (Record, p. 844; *Humbird* v. *Avery*, 110 Fed. Rep., 463, 471.) The Land Department has construed the act to apply to lands included in any individual claim, not patented prior to its passage, claimed adversely under the railroad grant, which, prior to January 1, 1898, was initiated in good faith by some qualified person by *settlement*, *entry*, or *purchase*. (28 L. D., 107); *Northern Pacific R. R. Co.* v. *Sherwood* (28 L. D., 126, 127, 128); *Northern Pacific R. R. Co.* v. *Rooney* (29 L. D., 242, 243). In other words, the Land Department has held that lands which in good faith have been entered or purchased prior to January 1, 1898, under any public land law are affected by the act. But lands not so entered or purchased are not affected thereby unless settled upon in good faith by a qualified settler prior to January 1, 1898. The wording of the act does not justify the narrow construction contended for by complainants nor the broad construction insisted upon by defendants, but does warrant the construction adopted by the Land Department. Two classes of land are designated by the act, viz, (1) lands entered or purchased directly from the United States, and (2) lands "settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department." Two classes of persons were intended to be protected, viz, entrymen or purchasers, whether settlers or not, and settlers without regard as to whether they are entrymen or purchasers. This is clear from the use of the word "purchased" in the enacting clause. The point is made, however, by complainants that the last proviso in the act indicates that the word "purchased" employed in the enacting clause is limited to lands purchased by "settlers." This construction would reject as meaningless and surplusage the word "purchased" as the same is employed in the enacting clause, as "settlers" are fully protected by said clause, whether they have purchased the lands claimed by them or not, and should not be adopted if a construction can be legitimately found which will give force to and preserve the word "purchased." (Black Int. Law, p. 83.)

OBLIGATION OF RAILWAY COMPANY TO RELINQUISH.

The second assignment of error presents the question whether or not the act of 1898 obligates the Northern Pacific Railway Company to relinquish any lands. If the position of complainants, to the effect that it is optional on the part of the railway company to relinquish any lands, is correct, it would seem to have been a waste of time on the part of Congress to consider, discuss, and enact the statute. If the act is of no binding force upon the railway company, why did it accept its provisions? And why should the officers of the Land Department be directed to administer it? If the act had not been accepted by the railway company, it might have been urged with some plausibility that the company was not bound by its provisions. As the act was accepted by the railway company, and thereafter it applied for and received benefits thereunder, and inasmuch as the purpose of the act can not be accomplished unless the railway company is obligated to relinquish lands within the limits of the Northern Pacific Railroad land grant, included within its provisions, the railway company and its successors and assigns should be held to have agreed to relinquish all lands requested by the Land Department unless specially excepted from relinquishment by the terms of the act. (*O'Brien* v. *Wheelock*, 184 U. S., 450, 491; *Lindsay* v. *Mullen*, 176 U. S., 126, 146; *People* v. *Murray et al.*, 5 Hill, 468; *Todd* v. *Kerr*, 42 Barb., 319; *Ferguson* v. *Landram*, 5 Bush. (Ky.), 230; Bigelow on Estoppel, 2d ed., p. 509; Black's Const. Law, 2d ed., p. 59.)

Complainants urge, however, that even though it be conceded that the act obligates the railway company to relinquish some lands, the lands in controversy are not subject to relinquishment for the reason that they were sold prior to having been *listed* by the Secretary of the Interior. In other words, that no lands fall within the operation of the act which were sold prior to being included in a list prepared by the Secretary of the Interior and delivered to the railroad grantee or its successor in interest. A construction of the act thus contended for would permit the railway company to defeat its purpose, by selling or contracting to sell lands which were claimed by settlers and others at the date of its passage. Complainants admit that such construction requires the insertion of the word "then" between the words "lands" and "sold" in the second proviso. In the construction of a statute it is sometimes permissible to supply a word, where, for instance, the language employed in one part is plainly elliptical, and the intent is clearly expressed in another part, and a word is necessary to complete the sense. "But words should never be supplied or changed in a statute unless to effect a meaning clearly shown by other parts and to carry out an intent somewhere expressed." (Black Int. Law, p. 85.) Nowhere in the statute is there a clearly expressed intent to the effect that as a condition precedent to any lands falling within its operation they must be included in a list prepared by the Secretary of the Interior, and such list be delivered to the railroad grantee or its successor in interest. It must be remembered that the furnishing of the list for relinquishment to the railroad grantee is almost the final step to be taken by the Land Department under said act, and that this can only occur after opportunity has been afforded the individual claimant, as against the grant, to transfer his claim elsewhere and he has refused. It is sufficient in disposing of this contention, however, to quote what was said by the court in passing thereon:

> The act refers to conditions existing at the time of its passage. It does not embarrass the railroad grantee by requiring it to relinquish

> any land which before the passage of that act it had sold or contracted. Neither does it provide for its own practical nullification by excepting from its provisions lands which the railroad grantee might thereafter choose to sell or contract, as in this immense sale of lands to the complainants; and after the passage and acceptance of the act the complainants could acquire no rights in the land not in subordination to its provisions. The act speaks from its passage. It does not make any rights or obligations dependent upon the celerity or tardiness of the Secretary in the performance of the duties which the act imposes upon him.

(Record, p. 841; *Humbird* v. *Avery*, *supra*, p. 468.)

The decision of the Land Department upon the questions presented by the complainants and by the defendants affecting the railroad indemnity selections and the conflicting claims to the lands involved can not be known or anticipated. In administering the act of July 1, 1898, however, and in applying its provisions in any case, whether the Land Department adheres to its former ruling in respect to patented lands or recedes therefrom and follows the ruling of the circuit court; whether it holds that the act applies only to lands entered or purchased in good faith by a qualified settler or has a wider application, or whether it follows the ruling of the circuit court in respect to the force and effect of the clause in the act relating to the making and delivering of a list or lists of lands, or adopts the view of complainants in respect to said clause—innumerable suits in court will inevitably result, the titles to vast quantities of land be clouded, and the adjustment of the Northern Pacific land grant by the Land Department indefinitely postponed. It is therefore of the utmost importance to public and private interests that this court should pass upon and construe said act.

THE AMENDATORY ACT.

As no part of the lands in controversy has been patented to settlers, a discussion of the amendatory act of March 2, 1901 (32 Stat., 950), is not deemed necessary.

Respectfully submitted.

Frank L. Campbell,
Assistant Attorney-General.
A. C. Campbell,
Assistant Attorney.
F. W. Clements,
Assistant Attorney.

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REGULATIONS AND INSTRUCTIONS

UNDER THE

ACT OF [illegible] ([illegible] STAT., [illegible]),

RELATING TO

THE ADJUSTMENT BY THE LAND DEPARTMENT OF
CONFLICTING CLAIMS TO LANDS WITHIN
THE LIMITS OF THE GRANT TO THE
NORTHERN PACIFIC RAIL-
ROAD COMPANY;

ALSO

REGULATIONS UNDER THE ACT OF [illegible] ([illegible]
STAT., [illegible]), EXTENDING THE PROVISIONS OF
THE ACT OF JULY [illegible], TO CERTAIN
CLAIMS TO LANDS WITHIN THE
INDEMNITY LIMITS OF SAID
RAILROAD GRANT.

REGULATIONS AND INSTRUCTIONS

UNDER THE

ACT OF JULY 1, 1898 (30 STAT., 597, 620),

RELATING TO

THE ADJUSTMENT BY THE LAND DEPARTMENT OF CONFLICTING CLAIMS TO LANDS WITHIN THE LIMITS OF THE GRANT TO THE NORTHERN PACIFIC RAILROAD COMPANY;

AND ALSO

REGULATIONS UNDER THE ACT OF MARCH 2, 1901 (31 STAT., 950), EXTENDING THE PROVISIONS OF THE ACT OF JULY 1, 1898, TO CERTAIN CLAIMS TO LANDS WITHIN THE INDEMNITY LIMITS OF SAID RAILROAD GRANT.

if no rights thereto had ever vested in the said railroad grantee, and all qualified persons who have occupied and may be on said lands as herein provided, or who have purchased said lands in good faith as aforesaid, their heirs and assigns, shall be permitted to prove their titles to said lands according to law, as if said grant had never been made; and upon such relinquishment said Northern Pacific Railroad Company or its lawful successor in interest may proceed to select, in the manner hereinbefore provided, lands in lieu of those relinquished, and patents shall issue therefor: *Provided further*, That the railroad grantee or its successor in interest shall accept the said list or lists so to be made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it, but it shall not be bound to relinquish lands sold or contracted by it or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron, or coal: *And provided further*, That whenever any qualified settler shall in good faith make settlement in pursuance of existing law upon any odd-numbered sections of unsurveyed public lands within the said railroad grant to which the right of such railroad grantee or its successor in interest has attached, then upon proof thereof satisfactory to the Secretary of the Interior, and a due relinquishment of the prior railroad right, other lands may be selected in lieu thereof by said railroad grantee or its successor in interest, as hereinbefore provided, and patents shall issue therefor: *And provided further*, That nothing herein contained shall be construed as intended or having the effect to recognize the Northern Pacific Railway Company as the lawful successor of the Northern Pacific Railroad Company in the ownership of the lands granted by the United States to the Northern Pacific Railroad Company, under and by virtue of foreclosure proceedings against said Northern Pacific Railroad Company in the courts of the United States, but the legal question whether the said Northern Pacific Railway Company is such lawful successor of the said Northern Pacific Railroad Company, should the question be raised, shall be determined wholly without reference to the provisions of this act, and nothing in this act shall be construed as enlarging the quantity of land which the said Northern Pacific Railroad Company is entitled to under laws heretofore enacted: *And provided further*, That all qualified settlers, their heirs or assigns, who, prior to January first, eighteen hundred and ninety-eight, purchased or settled upon or claimed in good faith, under color of title or claim of right under any law of the United States or any ruling of the Interior Department, any part of an odd-numbered section in either the granted or indemnity limits of the land grant to the Northern Pacific Railroad Company to which the right of such grantee or its lawful successor is claimed to have attached by definite location or selection, may in lieu thereof transfer their claims to an equal quantity of public lands surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron, or coal, and free from valid adverse claim, or not occupied by a settler at the time of such entry, situated in any State or Territory into which such railroad grant extends, and make proof therefor as in other cases provided; and in making such proof, credit shall be given for the period of their bona fide residence and amount of their improvements upon their respective claims in the said granted or indemnity limits of the land grant to the said Northern Pacific Railroad Company the same as if made upon the tract to which the transfer is made; and before the Secretary of the Interior shall cause to be prepared and delivered to said railroad grantee or its successor in interest any list or lists of the several tracts which have been purchased or settled upon or occupied as hereinbefore provided, he shall notify the purchaser, settler, or claimant, his heirs or assigns, claiming against said railroad company, of his right to transfer his entry or claim, as herein provided, and shall give him or them option to take lieu lands for those claimed by him or them or hold his claim and allow the said railroad company to do so under the terms of this act.

A.—WHO ARE THE BENEFICIARIES UNDER THIS ACT? FROM WHOM MAY RELINQUISHMENTS BE RECEIVED, AND BY WHOM MAY THE LIEU SELECTIONS BE MADE?

1. The act designates a class of beneficiaries whose status is that of claimants adverse to the Northern Pacific Railroad Company, or its successor in interest, and in doing so different words and terms of description are used in different portions of the act; but, considering the act in its entirety, and giving due recognition to each provision therein, this class embraces any qualified person who, prior to January 1, 1898, by settlement, entry, or purchase, initiated in good faith a claim to lands of the description given, "under color of title or claim of right under any law of the United States or any ruling of the Interior Department," and who is still maintaining such claim conformably to such law or ruling.

This class also embraces the heirs of the claimant in all instances where he has died, and his claim or entry or right to perfect title thereunder is one which under the public-land laws descends or passes to his heirs. It further embraces the assigns of the claimant in all instances where, in the absence of an inhibition against so doing, he has sold or transferred his claim or entry, or the right to perfect title thereunder, to one who is not by law disqualified from succeeding to such claim or entry, or the right to perfect title in himself thereunder.

2. The act designates as one beneficiary the Northern Pacific Railroad Company, or its lawful successor in interest, subject. however, to the following proviso:

> * * * *And provided further,* That nothing herein contained shall be construed as intended or having the effect to recognize the Northern Pacific Railway Company as the lawful successor of the Northern Pacific Railroad Company in the ownership of the lands granted by the United States to the Northern Pacific Railroad Company under and by virtue of foreclosure proceedings against said Northern Pacific Railroad Company in the courts of the United States; but the legal question whether the said Northern Pacific Railway Company is such lawful successor of the said Northern Pacific Railroad Company, should the question be raised, shall be determined wholly without reference to the provisions of this act. * * *

An examination of a certified copy of the record in the foreclosure proceedings referred to, and a consideration of the opinion of the Attorney-General dated February 6, 1897 (21 Opinions of Attorneys-General, 486), show that the Northern Pacific Railway Company is such lawful successor in interest as to all lands within the limits of the grant, excepting those situated in the State of Minnesota and in the State of North Dakota east of the Missouri River. As to all lands within the limits of the grant situated in the State of Minnesota and in the State of North Dakota east of the Missouri River, the Northern Pacific Railroad Company has no successor in interest, but its property and affairs are now in the hands of receivers, appointed and acting under the authority and direction of certain circuit courts of the United States.

Within the limits of that portion of the grant to which the Northern Pacific Railway Company is thus the lawful successor in interest, relinquishments should be executed, and selections in lieu thereof should be made by said railway company. Within the limits of that portion of the grant situated in the State of Minnesota and in the State of North Dakota east of the Missouri River, relinquishments should be executed by the Northern Pacific Railroad Company, and also by the receivers thereof, and selections in lieu thereof should be made by such receivers on behalf of the railroad company; the receivers, in executing relinquishments and in making lieu selections, to act under proper authorization first obtained from the proper court.

3. In these regulations the claimant adverse to the railroad company or its successor in interest will, for convenience, be spoken of as the individual claimant his claim to the land in contest or controversy will be spoken of as an individual claim; the railroad company or its successor in interest, as the case may be, will be spoken of as the railroad claimant, and its claim to the land in contest or controversy will be spoken of as the railroad claim.

B.—WHAT LANDS ARE SUBJECT TO RELINQUISHMENT SO AS TO BECOME THE BASES FOR LIEU SELECTIONS?

4. To authorize a lieu selection the relinquishment must be of the whole or some legal subdivision of an odd-numbered section in either the primary or indemnity limits of the land grant to the Northern Pacific Railroad Company, which is the subject of conflicting claims asserted by an individual claimant upon the one part and by the railroad claimant upon the other part.

5. A relinquishment can in no event be made until after the land claimed has become identified by the public surveys.

6. The act makes *special provision* for instances where, *after January 1, 1898*, a qualified person in good faith makes settlement, with a view to homestead entry, upon unsurveyed lands within the primary limits of said grant, which upon survey are found to be within an odd-numbered section to which the right of the railroad company has attached by the definite location of its line of road. The purpose of this provision is to afford relief to those who make such settlement before the identification by survey of the lands to which the railroad claimant is entitled.

Such settlement claim must be continued and the right of the settler asserted after survey by an application at the local land office to make homestead entry of the lands settled upon, accompanied by proof of such settlement, and the continued maintenance of the claim. These claimants are not accorded the privilege of taking other lands in lieu of those settled upon; but if the proof submitted is deemed satisfactory the railroad claimant will be requested to relinquish the lands embraced in said claims and to take other lands. All the provisions of these regulations are applicable to these lands excepting those pertaining to relinquishments by individual claimants.

7. Since the issuance of patent terminates the jurisdiction of the Land Department over the lands patented, and exhausts its power to examine and decide upon claims to such lands, and since this act manifestly refers to conflicting claims to lands which have not passed beyond the jurisdiction of the Land Department, it follows that its provisions are confined to unpatented lands, and that lands which have been patented are not the subject of relinquishment and can not be made the basis of a lieu selection under this act; but the point to which the opposing claims have been prosecuted, or the extent to which they have been considered by the Land Department, is not material if they be otherwise within the terms of the act, and the lands remain unpatented.

C.—WHAT ARE THE CLAIMS WHICH COME WITHIN THE PROVISIONS OF THIS ACT?

8. An individual claim adverse to the railroad claim is one which, prior to January 1, 1898, was initiated in good faith by some qualified person, by settlement, entry, or purchase, "under color of title or claim of right under any law of the United States or any ruling of the Interior Department," and which is still maintained conformably to such law or ruling, and is one which, in the absence of the railroad claim, could be perfected into full title. (See also paragraph 6.)

9. The railroad claim is one which arises from the definite location of the line of railroad if the land is within the primary limits of the grant, or which arises from a lieu selection if the land is within the indemnity limits, and is one which, in the absence of all individual claims, would enable the railroad claimant to obtain full title to the land.

10. The purpose of the act is to avoid further strife and contention before the Land Department between the railroad claimant upon the one hand and individual claimants upon the other hand, and to that end the act extends alternately to the individual claimant and the railroad claimant an opportunity to acquire other lands of equal area in lieu of those in contest. The privilege of making a lieu selection is not dependent upon success or failure in the contest, but rather upon the existence of a contest or controversy which is intended to be disposed of without subjecting the parties to the delay, expense, and inconvenience incident to its further prosecution. The act contains a provision that nothing therein "shall be construed as enlarging the quantity of land which the said Northern Pacific Railroad Company is entitled to under laws heretofore enacted;" but in the light of other provisions in the act in harmony with which this one must be construed, it is

obvious that this provision is not intended to restrict the operation of the act to those instances in which the railroad claim is ultimately found to be the superior one.

To ascertain that fact would require the prosecution of every contest to a final decision, and would render the act practically inoperative, because, if compelled to litigate its claim to a final decision through the local office, the General Land Office, and before the Secretary of the Interior, it is doubtful whether the railroad claimant would surrender for the benefit of the defeated individual claimant the railroad claim thus established at a cost of much time, expense, and inconvenience. The claim which will support a relinquishment and lieu selection is not described as a *lawful* one, but as a "right * * * *claimed* to have attached by definite location or selection," and as a claim initiated in good faith "*under color of title or claim of right*," etc. Under the act of July 2, 1864 (13 Stat., 365), the railroad company became entitled to all the odd-numbered sections within the primary limits of the grant, or to indemnity for such as were "granted, sold, reserved, occupied by homestead settlers, or preempted, or otherwise disposed of," at the date of the definite location of its line of road.

Thus, the maximum quantity of lands to which the company was entitled is established by ascertaining the area included in odd-numbered sections within the primary limits of the grant as adjusted to the line of definite location. The clause in the act of July 1, 1898, providing against an enlargement of the quantity of lands to which the railroad company was then entitled has reference to the maximum quantity ascertained as aforesaid, and does not restrict the privilege of making selections under that act to those instances where the railroad claimant has an absolute legal right to the particular lands relinquished, a matter which would not be involved in an ascertainment of the quantity of the grant.

D.—WHAT LANDS ARE SUBJECT TO SELECTION IN LIEU OF THOSE RELINQUISHED?

11. Selections will be limited to a quantity of land not exceeding that relinquished, but, since all selections must be according to legal subdivisions which generally approximate but do not always embrace the same area, a slight difference in the acreage of the tract relinquished and selected will not be deemed an inequality in quantity.

12. Subject to the limitations named in paragraphs 13 and 14, selections may be made from any public lands within a State into which the Northern Pacific Railroad land grant extends, surveyed or unsurveyed, not mineral or reserved, not valuable for stone, iron, or coal, not subject to valid adverse claim, and not occupied by a settler at the time of such selection; but odd numbered sections within the Bozeman, Helena, and Missoula land districts in the State of Montana, and the Cœur d'Alene land district in the State of Idaho, which are also within the primary or indemnity limits of said land grant, can not be selected by

or patented to the railroad claimant unless they have been finally classified as non-mineral under the act of February 26, 1895 (28 Stat., 683).

13. Selections of unsurveyed lands by the railroad claimant are confined to odd-numbered sections or legal subdivisions therein "to be identified by the survey when made," that is, the selection must be of the whole or some legal subdivision of a designated odd-numbered section, so that the public survey when made will give identity to the land selected.

Selections of unsurveyed lands by an individual claimant must be designated according to the description by which they will be known when surveyed, if that be practicable, or if not practicable, by giving with as much precision as possible the locality of the tract with reference to known landmarks, so as to admit of its being readily identified when the lines of survey come to be extended, and the selection must be made to conform to such survey within thirty days from the date of the receipt at the local land office of the approved plat of the township embracing such lands.

14. Lands selected by an individual claimant in lieu of other lands, the claim to which has *not* been carried to final entry and certificate or to the submission of final proof entitling him to final entry and certificate, must be in a compact body and be of the character subject to entry under the particular law controlling the claim relinquished, and this applies whether the lands selected are surveyed or unsurveyed. (See paragraph 36.)

E.—PROCEDURE IN OBTAINING RELINQUISHMENTS.

15. As soon as may be practicable after the adoption of these regulations, an examination will be made of the contests pending before the Secretary of the Interior, and those appearing to come within the provisions of the act of July 1, 1898, will be returned to the Commissioner of the General Land Office for disposition hereunder, together with all like contests then pending in the General Land Office. From time to time thereafter other contests or controversies appearing to come within the provisions of said act will be disposed of in like manner. Any claimant believing that his or its claim comes within the provisions of said act may request that such claim be disposed of thereunder, and such request will receive due consideration.

16. In speaking of the surrender by the individual claimant of the lands in contest and the taking by him of other lands in lieu thereof, the act describes it as a *transfer of his claim or entry;* but since the transaction, whether by the individual claimant or by the railroad claimant, is essentially the same, it is for convenience described and spoken of throughout these regulations as a relinquishment of the lands in contest and a selection of other lands in lieu thereof.

17. The option of relinquishing the lands in contest and selecting other lands in lieu thereof is by law first extended to the individual

claimant, and if he elects to hold the lands which are in contest the railroad claimant will be called upon to relinquish the same and to select other lands in lieu thereof. (See paragraphs 29 to 31, inclusive.)

18. Whenever any contest or controversy appears to come within the provisions of said act, the Commissioner of the General Land Office will notify the individual claimant of the option accorded by law to individual claimants and will request him, if still maintaining his claim as herein required, to make proof of such continued maintenance and to exercise his option within sixty days after the time of receiving such notice. (See paragraph 30.) If the claimant elects to relinquish the lands in contest and take other lands in lieu thereof, he must execute a proper relinquishment as hereinafter required (see paragraphs 24 to 26, inclusive), and transmit the same to the Commissioner of the General Land Office, together with notice of his election so to do.

19. In all cases where the individual claim has not passed to final entry and certificate, or to the submission of final proof entitling the claimant to final entry and certificate, a failure to furnish satisfactory proof of the continued maintenance of the claim and to exercise such option within the time named will be deemed an abandonment of the claim, and the land embraced therein will be disposed of accordingly.

20. In all cases where the individual claim has passed to final entry and certificate, or to the submission of final proof entitling the claimant to final entry and certificate, proof of the continued maintenance of the claim is not essential, but a failure to exercise such option within the time named will be deemed an election on the part of the individual claimant to hold the land in contest.

21. The Commissioner of the General Land Office may, in his discretion, extend the time for exercising such option in special cases upon proper cause being shown.

22. An individual claimant may, without formal notice or request, make proof of the continued maintenance of his claim and exercise his option and notify the Commissioner of the General Land Office thereof, in which event the notice and request otherwise required will not be necessary. (See paragraphs 18 and 24 to 26, inclusive.)

23. From time to time, and as soon as conveniently may be done, the Commissioner of the General Land Office shall prepare and submit to the Secretary of the Interior duplicate lists describing, according to the smallest legal subdivision, the lands to which there are conflicting claims as described in these regulations, and which the individual claimants have elected to hold; and, upon the approval of any such list by the Secretary of the Interior, the Commissioner of the General Land Office will retain one copy thereof in his office and will transmit the other copy thereof to the said railroad claimant, with the request that it relinquish its claims to the lands therein described. Every list will be deemed conclusive against the railroad claimant to the extent that it will be required, within sixty days after receipt thereof, to execute and deliver to the Secretary of the Interior a proper relinquishment to

the United States of all the lands in said list, or to make satisfactory showing that those not relinquished have been sold or contracted to be sold, or are used or needed for railroad purposes, or are valuable for stone, iron, or coal. (See paragraphs 24 to 26, inclusive, and 29 to 31, inclusive.)

F.—WHAT IS A PROPER RELINQUISHMENT?

24. The relinquishment must be an instrument in writing describing the lands in contest and making appropriate reference to the claim intended to be surrendered, and in terms releasing, quitclaiming, and relinquishing unto the United States of America all the right, title, interest, and claim of the individual or railroad claimant, as the case may be, to such lands. It must be executed, witnessed, and acknowledged conformably to the laws respecting the conveyance of real property in the State where the land is situate.

25. Relinquishments by individuals of claims which have passed to final entry and certificate, or to the submission of final proof entitling the claimant to final entry and certificate, must also be executed by the wife of the claimant, if he have one, in such manner as will effectually bar any dower, homestead, or other interest on her part in or to the lands relinquished.

26. A relinquishment of an individual claim which has passed to final entry and certificate, or to the submission of final proof entitling the claimant to final entry and certificate, or which under existing laws is assignable before that time, and also all relinquishments by the railroad claimant, must be accompanied by proof satisfactorily showing whether the land relinquished has been sold, contracted to be sold, or encumbered. (See paragraphs 1 and 32.)

G.—EFFECT OF RELINQUISHMENT—WHEN TO SELECT OTHER LANDS IS COMPLETE.

27. Upon the filing with and acceptance by the Commissioner of the General Land Office of a relinquishment by the individual claimant the lands in contest may be patented to the railroad claimant in the same manner as other lands falling within the terms of the grant; and the individual claimant, upon receiving notice of the acceptance of his relinquishment, will be entitled, upon proper application (see paragraph 32), to select other lands, according to the condition and limitations of said act (see paragraph 36).

28. Upon the filing with and acceptance by the Commissioner of the General Land Office of a relinquishment by the railroad claimant the lands so relinquished "shall revert to the United States, and such tracts shall be treated under the laws thereof in the same manner as if no rights thereto had ever vested in the said railroad grantee;" and the individual claimants thereto shall be permitted to perfect their claims or entries and to obtain title thereunder upon compliance with the laws pertaining thereto. In the event that any individual claim on account

of which a relinquishment is made by the railroad claimant is not perfected into full title the lands embraced therein will not revert to the railroad claimant, but will be subject to other disposition, according to law. The railroad claimant, upon receiving notice of the acceptance of its relinquishment, will be entitled, upon proper application (see paragraphs 32 to 41, inclusive), to select other lands, according to the conditions and limitations of said act.

H.—DISPOSITION OF CONTESTS INVOLVING LANDS SOLD OR CONTRACTED TO BE SOLD BY THE RAILROAD CLAIMANT, USED OR NEEDED FOR RAILROAD PURPOSES, OR VALUABLE FOR STONE, IRON, OR COAL.

29. By the terms of the act the railroad claimant is exempted and excused from relinquishing lands which have been sold or contracted to be sold by it, or which are used or needed for railroad purposes, or or which are valuable for stone, iron, or coal.

30. Where it satisfactorily appears from the record in any contest that the lands in controversy come within the terms of this exemption, the Commissioner of the General Land Office in calling upon the individual claimant to exercise the privilege accorded to him (see paragraphs 17 and 18) will notify him that the railroad claimant can not be required to relinquish such lands, and that unless he elects to relinquish the same and take other lands in lieu thereof the contest will proceed to final determination without further regard to said act; and where such exemption is satisfactorily shown after the individual claimant has elected to hold the lands in contest (see paragraph 23), the Commissioner of the General Land Office will notify him thereof and accord him another opportunity, to be exercised within a stated time, to relinquish the lands in contest and take other lands. In the event that this privilege is declined, the contest will proceed to final decision in the usual way.

31. The affidavit of two persons having personal knowledge of the facts will be deemed sufficient to *prima facie* establish that any lands come within this exempted class; but such affidavit should state fully when and to whom the lands were sold or contracted to be sold, and if contracted to be sold the extent to which such contract has been performed, and whether it is still subsisting, the necessity for the present or future use of such lands for railroad purposes, and the extent thereof, or how it has been ascertained that they are valuable for stone, iron, or coal, as the case may be.

I.—PROCEDURE IN SELECTING LIEU LANDS AND PERFECTING TITLES THERETO.

32. Applications to select lieu lands hereunder, whether by an individual claimant or by the railroad claimant, must be presented to the local land office of the district within which the lands selected are situate. The application must particularly state the description and

acreage of the lands relinquished, the acceptance by the Commissioner of the General Land Office of the relinquishment, and the description of the lands selected (see paragraph 13), and must be accompanied by proof that the land selected is of the character subject to selection (see paragraphs 11 to 14, inclusive). If the records of the local office do not show to the contrary, the character of the land will be deemed to be *prima facie* established where the application is supported by the oath of the individual claimant, or of an agent of the railroad claimant, based upon a personal examination of the land.

33. If the application is in proper form and, upon examination of the records in the local office, the lands selected appear to be subject to such selection, the local officers will accept the application, give it an appropriate number, make due notation of the selection upon the records of their office, and transmit the papers to the Commissioner of the General Land Office for his consideration.

34. When the lands selected have been returned as mineral by the surveyor-general, the first subdivision of paragraph 103 of the mining regulations, approved December 15, 1897, shall be applicable thereto; but in view of the proof exacted by paragraph 32 hereof the requirements of paragraph 104 of such mining regulations will be dispensed with as to all selections hereunder of lands not returned as mineral.

35. When any lands, whether surveyed or unsurveyed, have been selected hereunder by an individual claimant or by the railroad claimant, no right thereto can be initiated by settlement or entry while such selection remains of record.

36. Where lands are selected by an individual claimant in lieu of lands the claim to which has not been carried to final entry and certificate, or to the submission of final proof entitling him to final entry and certificate, the claimant will be required to perfect his right to the lands selected by compliance with the law relating to that class of claims, and to submit proof thereof in the usual way, but credit will be given for his *bona fide* residence, improvements, cultivation, or reclamation, as the case may be, and for any payment of fees or purchase money upon the land relinquished, it being the purpose of the act to give individual claimants the same status with respect to the lieu lands selected by them which they occupied with respect to the lands relinquished.

J.—TIME OF ISSUING PATENTS TO SELECTED LANDS.

37. Unsurveyed lands, whether selected by an individual claimant or by the railroad claimant, will in no event be patented until after survey.

38. Unsurveyed lands selected by the railroad claimant will not be patented until after the expiration of four months from the date of the receipt at the local land office of the approved plat of the township embracing the lands so selected· and surveyed lands selected by the

railroad claimant will not be patented until after the expiration of four months from the date of selection.

39. Unsurveyed lands selected by an individual claimant in lieu of lands the claim to which has been regularly carried to final entry and certificate or to the submission of final proof entitling him to final entry and certificate, will not be patented until after the expiration of four months from the date of the receipt at the local land office of the approved plat of the township embracing the lands so selected; and surveyed lands selected by an individual claimant in lieu of lands the claim to which has reached a like status will not be patented until after the expiration of four months from the date of selection.

40. The purpose of the last two paragraphs is, in all instances where publication and notice will not be had, to give to settlers, if any, upon such lands at the time of the selection thereof, the full period prescribed by law within which to apply at the local land office to make homestead entry of the land, and to afford ample time for the local officers to advise the Commissioner of the General Land Office of any such application before the time arrives for issuing patent under the selection.

41. Selections made by the railroad claimant which are found satisfactory by the Commissioner of the General Land Office will, upon the expiration of the time required to elapse before the issuing of patent (see paragraphs 37 to 40, inclusive), be certified to the Secretary of the Interior, and if approved by him will be patented to the railroad claimant as though originally granted.

K.—FORMS TO BE USED IN THE ADMINISTRATION OF SAID ACT.

42. The election of the individual claimant to hold or relinquish the lands in controversy and the proof of the maintenance of his claim may be made according to the following form:

THE STATE OF ———,
County of ———, *ss:*

——— ———, being first duly sworn, upon his oath deposes and testifies as follows:

1. Q. What is your name, age, and post-office address?—A. ———.

2. Q. Are you a native-born citizen of the United States; and if so, in what State or Territory were you born?—A. ———.

3. Q. If you are not a native-born citizen of the United States, have you declared your intention to become a citizen or have you been naturalized? If so, when and where?—A. ———.

4. Q. Are you the identical person who has heretofore been claiming (here describe land) under the —— law? If so, how and when was your claim initiated?—A. ———.

5. Q. Do you understand that there are conflicting claims to this land, one of which is your claim and the other of which is the claim of the Northern Pacific Railroad Company or its successor in interest?—A. ———.

6. Q. Do you desire and elect, under the act of Congress approved July 1, 1898 (30 Stat., 597, 620), to hold the land in controversy and

retain your present claim thereto, or do you desire and elect under said act to relinquish the land in controversy and to transfer your said claim to other lands?—A. ———.

7. Q. State fully and accurately where you resided from time to time since the initiation of your said claim to said land.—A. ———.

8. Q. Of whom does your family, if any, consist, and where have they resided from time to time since the initiation of said claim?—A. ———.

9. Q. State accurately what you have done in the way of improving, cultivating, or reclaiming this land, giving dates, value of improvements, and amount of expenditure.—A. ———.

10. Q. How much of the time were you upon said land during the year 1897, and what work did you do or have done thereon during that year?—A. ———.

11. Q. What personal property did you have on this land on January 1, 1898?—A. ———.

12. Q. Have you sold, conveyed, or mortgaged any portion of this land or assigned your claim thereto? If so, state when, to whom, and for what purpose.—A. ———.

13. Q. How much other land do you own now?—A. ———.

14. Q. Have you ever made a filing upon or an entry of other public lands? If so, give the time, description of the land, name of the land office, and character of the filing or entry.—A. ———.

15. Q. To whom can you refer for support and corroboration of the statements made herein?—A. ———.

(Sign plainly with full name.) ——— ———.

I hereby certify that the foregoing testimony was fully read to the said ——— ——— before being subscribed by him, and that the same was subscribed and sworn to by him before me this —— day of ———, ——.

——— ———.

NOTE.—This affidavit may be made before the register or receiver of the local land office, or before any other officer authorized to administer an oath.

If the claimant elects to relinquish the lands in controversy, he must execute the accompanying relinquishment.

43. A relinquishment by an individual claimant may be made substantially according to the following form, and one by the railroad claimant may be modeled therefrom:

Know all men by these presents:

That I, ——— ———, of ——— County, in the State of ———, the identical person who heretofore initiated and is now asserting a claim to the following-described lands, to wit, [describe fully and accurately] under the ——— law, desiring to take advantage of the provision in the act of Congress approved July 1, 1898 (30 Stat., 597, 620), authorizing an adjustment by the Land Department of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company, do hereby release, quitclaim, and relinquish unto the United States of America all my right, title, interest, and claim in and to the lands aforesaid, and I request that this relinquishment be accepted by the Commissioner of the General Land Office in order that, under the provisions of the act of Congress aforesaid, I may select other lands in lieu of those hereby relinquished, and may perfect and obtain title to the lands so selected instead of to the lands hereby relinquished.

I, ——— ———, wife of the said ——— ———, for the purposes aforesaid, do hereby join my said husband in releasing, quitclaiming,

and relinquishing unto the United States of America the lands aforesaid, and I do specially waive and relinquish any and all dower, homestead, or other interest in the lands relinquished to which I am now or might hereafter be entitled according to law.

Witness our hands and seals this —— day of ———, A. D. ——.

——— ——— [SEAL.]
——— ——— [SEAL.]

Witnessed by:

——— ———.
——— ———.

NOTE.—This relinquishment must be executed, witnessed, and acknowledged conformably to the laws respecting the conveyance of real property in the State where the lands relinquished are situate, and the officer before whom the acknowledgment is made must make and attach hereto, under his name and official seal, an appropriate certificate of such acknowledgment.

44. The application to select lands in lieu of those relinquished and the affidavit in support thereof may be substantially according to the following forms:

UNITED STATES LAND OFFICE AT ———,
(Date:) ———, ——.

No. ——.

I, ——— ———, of the county of ———, in the State of ———, having made relinquishment of my (state character of claim) claim, covering the ——— of section ——, in township ——, range ——, in ——— land district, containing —— acres, heretofore included in the conflicting claims of the Northern Pacific Railroad Company, or its successor in interest, and myself, which relinquishment has been duly accepted by the Commissioner of the General Land Office, do hereby make application to select in lieu of the lands so relinquished the following lands, to wit: ————, in ——— land district.

My post-office address is ———, ———.

——— ———.

UNITED STATES LAND OFFICE AT ———,
(Date:) ———, ——.

We hereby certify that we have carefully considered the foregoing application, and have critically examined the plats and records of this office, so far as they apply to the lands sought to be selected. Finding that the application and proofs fully conform to the statute and regulations thereunder, and that the lands selected appear by the records of this office to be subject to such selection, we have accepted the application and have made due notation thereof upon the records pending the advice of the Commissioner of the General Land Office. $ —— fees paid.

——— ———,
Register.
——— ———,
Receiver.

AFFIDAVIT TO BE MADE BY INDIVIDUAL CLAIMANT IN SUPPORT OF FOREGOING APPLICATION TO SELECT.

UNITED STATES LAND OFFICE AT ——,
(Date:) ——, ——.

No. ——.

I, —— ——, of —— County in the State of ——, being duly sworn upon my oath, do depose and say that my post-office address is ——, ——; that I am the individual claimant who makes the foregoing application under the act of July 1, 1898 (30 Stat., 597, 620); that I am acquainted with the lands sought to be selected under the foregoing application, and have examined every subdivision thereof; that there is not to my knowledge within the limits of said land any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, or other mineral substance; that there is not within the limits of said land to my knowledge any placer or other valuable mineral deposit or any salines; that no portion of said land is claimed for mining purposes under local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year; that said land is essentially non-mineral land; that it does not to my knowledge contain any valuable stone, iron, or coal; that it is not reserved in any manner, is not subject to any valid claim whatsoever, and is not occupied by any settler. And further affiant sayeth not.

——, ——.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified to me); that I verily believe him to be a creditable person and the person he represents himself to be; and that this affidavit was subscribed and sworn to by him before me at my office at ——, within the —— land district, on this —— day of ——.

—— ——,
—— ——.

NOTE.—This affidavit may be made before the register or receiver of the local land office or before any other officer authorized to administer an oath.

If the claim relinquished be a desert-land claim, timber-culture claim, or a timber-purchase claim, which has not been carried to final entry and certificate, or to the submission of final proof entitling the claimant to final entry and certificate, the applicant must also make proof of the character of the land selected, as required by the regulations controlling that class of claims.

45. The following form may be used in listing lands to be relinquished by the railroad claimant:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., ——, *18—*.

Whereas, an act of Congress, approved July 1, 1898 (30 Stat., 597, 620), makes provision for the relinquishment by the Northern Pacific Railroad Company, or its successor in interest, upon the conditions therein named, of the whole or any part of an odd-numbered section, in either the primary or indemnity limits of the land grant to that company, to which the right of said company, or its lawful successor, is claimed to have attached by definite location, or selection, and which prior to January 1, 1898, has been "purchased directly from the United States or settled upon or claimed in good faith by any qualified settler, under color of title or claim of right under any law of the United

States, or any ruling of the Interior Department," or which, if an odd-numbered section in the primary limits, is settled upon after January 1, 1898, and before survey, by a qualified person, in good faith, with a view to homestead entry, and makes provision for the selection by said company, or its successor in interest, of other lands in lieu of those relinquished; and

Whereas, it is further provided in said act that the Secretary of the Interior shall ascertain and from time to time cause to be prepared and delivered to said railroad company, or its successor in interest, a list or lists of the tracts coming within the provisions thereof; and

Whereas, it is further provided by said act that said railroad company, or its successor in interest, shall accept the list or lists so made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it, but "shall not be bound to relinquish lands sold or contracted by it or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron, or coal;" and

Whereas, it is further provided as to all claims, excepting homestead settlements made on unsurveyed lands after January 1, 1898, that "before the Secretary of the Interior shall cause to be prepared and delivered to said railroad grantee, or its successor in interest, any list or lists of the several tracts which have been purchased or settled upon or occupied as hereinbefore provided, he shall notify the purchaser, settler, or claimant, his heirs or assigns, claiming against said railroad company, of his right to transfer his entry or claim, as herein provided, and shall give him or them option to take lieu lands for those claimed by him or them, or hold his claim and allow the said railroad company to do so under the terms of this act;" and

Whereas, upon examination by this office the following tracts of land have been found to be of the character authorized to be relinquished under said act, and the claimants therefor against the railroad company (where entitled to such option) have, upon due notice of their rights under said act, refused to transfer their respective claims to other lands, to wit:

List No. —.

STATE OF——, —— LAND DISTRICT.

Parts of sections.	Sec.	Tp.	R.	Adverse claimants.

Now, therefore, the said list is hereby submitted to the Secretary of the Interior for his consideration, with the recommendation that directions be given to this office to call upon the Northern Pacific Railroad Company or its successor in interest, as the case may be, to relinquish all of said lands or to satisfactorily show that those not relinquished have been sold or contracted to be sold, or are used or needed for railroad purposes, or are valuable for stone, iron, or coal; and to advise said railroad company or its successor in interest that upon filing the relinquishment requested it will be entitled to select other lands in lieu thereof, as provided in said act.

——— ———,
Commissioner.

DEPARTMENT OF THE INTERIOR,
——— —, *18*—.

Approved:
——— ———,
Secretary of the Interior.

L.—CASES NOT COVERED BY THESE REGULATIONS.

46. If in the administration of said act cases are found which are not covered by these regulations, such cases will be disposed of according to their respective merits under special instructions, or supplemental regulations embracing cases of that character will be adopted, as may seem necessary.

BINGER HERMAN, *Commissioner.*

Approved February 14, 1899.
C. N. BLISS,
Secretary.

[illegible]

[illegible]

[illegible]

[illegible]

INSTRUCTIONS

AND ADDITIONAL REGULATIONS UNDER THE ACT OF JULY 1, 1898 (30 STAT., 597, 620), RELATING TO THE ADJUSTMENT OF THE NORTHERN PACIFIC RAILROAD GRANT.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 3, 1899.

The Commissioner of the General Land Office.

SIR: The Department is in receipt of your office letter of May 1, 1899, presenting certain matters relating to the act of July 1, 1898 (30 Stat., 597, 620), in which you state:

> By letter of April 8, 1899, Messrs. Britton & Gray, resident attorneys for the Northern Pacific Railroad Company, call the attention of this office to the fact that a number of patents have issued adversely to said company since the passage of the act of July 1, 1898, covering lands which if unpatented would come within the provisions of said act, and suggest that so much of the circular of February 14, 1899, as restricts the application of the act to unpatented lands should be construed as applying only to lands patented prior to July 1, 1898, and hence in cases where patents have been issued to individual claimants after that date such claimants should be held to have elected to retain the lands embraced in their respective entries, and the company should be allowed the right to select other lands in lieu thereof under said act.
>
> * * * * * * *
>
> The question presented by said attorneys, as to whether the circular in question is to be interpreted so as to exclude from disposition under the act of July 1, 1898, all patented lands, whether patented prior to or after the date of the act, is therefore respectfully submitted for the consideration and instructions of the Department.

Paragraph 7 of the regulations approved February 14, 1899 (28 L. D., 103), issued under the act of July 1, 1898, states that:

> Since the issuance of patent terminates the jurisdiction of the Land Department over the lands patented and exhausts its power to examine and decide upon claims to such lands, and since this act manifestly refers to conflicting claims to lands which have not passed beyond the jurisdiction of the Land Department, it follows that its provisions are confined to unpatened lands, and that lands which have been patented are not the subject of relinquishment and can not be made the basis of a lieu selection under this act.

This portion of the paragraph can only relate to such lands as had been patented prior to the passage of the act of July 1, 1898, and as to all such lands said act is without application. But all conflicting claims coming within the provisions of said act to land which remained unpatented July 1, 1898, should be disposed of in accordance with the terms of that act.

The patenting of lands which were on July 1, 1898, the subject of such conflicting claims without following the provisions of said act was in violation of its terms, and therefore erroneous.

To the end that the benefits intended to be extended by said act may be still secured to those entitled thereto, and to avoid possible and unnecessary litigation in the courts as a result of the inadvertent or erroneous issuance of patents since July 1, 1898, in such cases, the following regulation is added to those adopted February 14 last, under said act, namely:

47. Where any portion of an odd-numbered section within the limits of the grant to the Northern Pacific Railroad Company coming within the provisions of the act of July 1, 1898, as herein construed, has been patented without following the provisions of that act, the individual claimant will, notwithstanding the issuance of such patent, be advised in the manner prescribed by paragraph 18 of the option accorded him by said act. If the patent was issued to him and he elects to relinquish his claim he will be required to make reconveyance of the land to the United States in the manner prescribed by paragraphs 24, 25, and 26; but if he elects to retain the land patented it will be listed according to paragraph 23, with a view to its relinquishment by the railroad company.

If the patent was issued to the railroad company and the individual claimant elects to retain the land so patented, the company will be required to make reconveyance thereof to the United States according to paragraphs 24 and 26, whereupon the individual claimant may perfect title thereto and the railroad company may select other lands in lieu thereof as in other cases.

Very respectfully,

THOS. RYAN,
Acting Secretary.

INSTRUCTIONS

MODIFYING DEPARTMENTAL REGULATIONS OF FEBRUARY 14, 1899, UNDER THE ACT OF JULY 1, 1898 (30 STAT., 597, 620), RELATING TO THE ADJUSTMENT OF THE NORTHERN PACIFIC RAILROAD GRANT.

Department of the Interior,
Washington, D. C., November 21, 1899.

The Commissioner of the General Land Office.

Sir: With your Office letter of October 24 last were transmitted certain relinquishments, Nos. 1 and 1-A, State of Minnesota, made by the Northern Pacific Railway Company, as successor to the Northern Pacific Railroad Company, under the provisions of the act of July 1, 1898 (30 Stat., 597, 620), embracing certain lands included in a list approved by this Department on August 8 last as a basis for relinquishment by the company under said act.

In submitting these relinquishments you fail to note that they are made by the Northern Pacific Railway Company and embrace lands in the State of Minnesota. Paragraph 2 of the regulations issued under said act, approved February 14 last (28 L. D., 103), states that:

> As to all lands within the limits of the grant situated in the State of Minnesota and in the State of North Dakota east of the Missouri River, the Northern Pacific Railroad Company has no successor in interest, but its property and affairs are now in the hands of receivers, appointed and acting under the authority and direction of certain circuit courts of the United States . . . . Within the limits of that portion of the grant situated in the State of Minnesota and in the State of North Dakota east of the Missouri River relinquishments should be executed by the Northern Pacific Railroad Company, and also by the receivers thereof, and selections in lieu thereof should be made by such receivers on behalf of the railroad company; the receivers, in executing relinquishments and in making lieu selections, to act under proper authorization first obtained from the proper court.

Since the forwarding of said relinquishments, however, there have been filed in this Department examined copies of special masters' and receivers' deeds, dated September 22, 1899, conveying to the Northern Pacific Railway Company all the rights of the Northern Pacific Railroad Company in and to lands east of the Missouri River, whether under the grant expressed in the act of Congress of July 2, 1864, or under any subsequent grant, by way of indemnity or otherwise, subject, however, to a certain mortgage or deed of trust dated the 1st day of January, 1881, and known as the general first mortgage of said Northern Pacific Railroad Company, and executed by it to the Central Trust Company of New York as trustee; also a certificate of satisfaction of said general first mortgage, said certificate having been executed by the Central Trust Company of New York on the 13th instant. The relinquishments under consideration were executed October 5 last, subsequent to the deed from the special masters and receivers to the Northern Pacific Railway Company, before referred to.

In view of the showing above referred to, the circular of February 14 last will be modified so as to recognize the Northern Pacific Railway Company as the lawful successor in interest as to all the lands within the limits of the grant provided for in the acts making grants to the Northern Pacific Railroad Company.

It is noted that said relinquishments do not include all of the lands covered by the list approved by this Department on August 8 last as the basis for relinquishment, the exceptions being as follows: W. ½ of the SW. ¼ of sec. 7, T. 133 N., R. 40 W., shown to have been sold to Anton J. Egeberd in December, 1895, and a strip of land 100 feet wide, extending through lots 6 and 7 of sec. 35, T. 133 N., R. 41 W., sold in 1892 to the Northern Pacific, Fergus and Black Hills Railroad Company.

By paragraph 30 of the regulations of February 14, 1899, it is provided:

> Where it satisfactorily appears from the record in any contest that the lands in controversy come within the terms of this exemption, the Commissioner of the General Land Office, in calling upon the individual claimant to exercise the privilege accorded to him (see paragraphs 17 and 18), will notify him that the railroad claimant can not be required to relinquish such lands, and that unless he elects to relinquish the same and take other lands in lieu thereof the contest will proceed to final determination without further regard to said act; and where such exemption is satisfactorily shown after the individual claimant has elected to hold the lands in contest (see paragraph 23), the Commissioner of the General Land Office will notify him thereof and accord him another opportunity, to be exercised within a stated time, to relinquish the lands in contest and take other lands. In the event that this privilege is declined, the contest will proceed to final decision in the usual way.

Relative to the tract first above described, it must be held that the showing is sufficient to exempt the company from relinquishing said tract, and under the above paragraph it becomes the duty of your Office to advise the individual claimant who has elected to hold said tract of said showing, and to accord him another opportunity, to be exercised within a fixed time, to be named by your Office, to relinquish his claim to said tract and take other lands. He should also be advised that in the event this privilege is declined the contest will proceed to final decision in the usual way.

Relative to the tract included in the right of way of the Northern Pacific, Fergus and Black Hills Railroad Company, the claimant to this land should also be advised of the showing and accorded an opportunity to retain this tract, subject to such right of way, or to relinquish his claim thereto and take other lands in lieu thereof as provided for in said act.

Relinquishment No. 1 is, upon examination, accepted by the Department, but action upon relinquishment No. 1-A, which includes only the tract covered by the right of way above referred to, is suspended, subject to the action of the individual claimant thereto under the privilege of election herein accorded him.

Very respectfully, E. A. HITCHCOCK,
Secretary.

REGULATIONS

UNDER THE ACT OF MARCH 2, 1901 (31 STAT., 950), EXTENDING THE PROVISIONS OF THE ACT OF JULY 1, 1898 (30 STAT., 597, 620), TO CERTAIN CLAIMS TO LANDS WITHIN THE INDEMNITY LIMITS OF THE NORTHERN PACIFIC LAND GRANT.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 15, 1901.

The act of March 2, 1901, reads as follows:

> That the provisions of the act of July first, eighteen hundred and ninety-eight, appearing in Thirtieth Statutes at Large, at pages six hundred and twenty, six hundred and twenty-one, and six hundred and twenty-two, providing a plan for the adjustment by the Land Department of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company, are hereby extended and made applicable to all instances where lands in odd-numbered sections within the indemnity limits of the grant to said company were patented to settlers under the public-land laws in pursuance of applications presented to, or proceedings initiated in, the local land office at a time when the land was embraced in a pending indemnity selection made by said company in conformity with the regulations of the Land Department, which indemnity selection has not since been waived or abandoned.

1. As far as applicable, and as hereby supplemented, the regulations of February 14, 1899 (28 L. D., 103), under the act of July 1, 1898, will be followed in the adjustment of claims under the new act.

2. The fact that conflicting claims to any tract come within the terms of the new act may be brought to the attention of the Commissioner of the General Land Office by either the individual claimant or the railroad company, but there must be such a showing of the present ownership under the patent, whether by the patentee or his transferee, as will enable the Commissioner of the General Land Office to notify the present individual claimant of his option, as provided by paragraph 18 of said regulations, except where he waives notice under paragraph 22 thereof, and a failure of the individual claimant to exercise such option within sixty days after the time of receiving such notice will be deemed an election on his part to retain the land patented, which fact shall be stated in the notice.

3. It being "the provisions of the act of" July 1, 1898, which are extended to the instances named in the new act, it follows that to bring conflicting claims to any tract within this extension of the act of July 1, 1898, all the following conditions must concur:

(*a*) The land involved must be a portion of an odd-numbered section within the indemnity limits of the Northern Pacific land grant;

(*b*) It must have been settled upon under the public-land laws prior to January 1, 1898;

(*c*) It must have been selected by the company as indemnity in accordance with then existing regulations prior to January 1, 1898;

(*d*) It must have been patented to the settler prior to July 1, 1898, in pursuance of an application presented to, or of proceedings initiated in, the local land office at a time when the land was embraced in such a pending indemnity selection; and

(*e*) Such indemnity selection must not have been waived or abandoned.

4. An indemnity selection will be held to have been waived or abandoned (*a*) where the basis assigned therefor has been used or designated in the selection of other lands; (*b*) where the selection has been formally withdrawn or relinquished, or where its rejection has been acquiesced in but the mere failure of the company to appeal from an adverse decision of the Commissioner of the General Land Office rendered in conformity to an existing departmental decision adverse to the company upon a like state of facts, will not be considered such an acquiescence.

5. Care must be exercised to prevent enlarging the quantity of land to which the railroad company is entitled under laws enacted prior to July 1, 1898, and in this connection attention is invited to subdivision "C" of the regulations of February 14, 1899.

Very respectfully,

BINGER HERMANN,
Commissioner.

Approved.
E. A. HITCHCOCK, *Secretary.*

O

Supreme Court of the United States.

No. 7.—October Term, 1904.

John A. Humbird and Frederick Weyerhaeuser
vs.
Waldo A. Avery et al.

On certificate from an order to the United States Circuit Court of Appeals for the Eighth Circuit.

[December 12th 1904.]

Mr. Justice Harlan delivered the opinion of the Court.

This case was brought before us upon questions certified by the Circuit Court of Appeals. Subsequently, the United States was allowed to intervene upon the general ground that the case involved important questions affecting the administration of the public land laws, including the grant to the Northern Pacific Railroad Company then in process of adjustment. And, on motion of the Government, the plaintiffs and defendants concurring, the whole record was ordered to be sent up for our consideration.

The case involves the title to numerous tracts of land situated on the line of the Northern Pacific Railway between Duluth and Ashland. The lands are described in an exhibit attached to the bill.

The plaintiffs Humbird and Weyerhaeuser sue as grantees of the Northern Pacific Railway Company, a Wisconsin corporation, which, it is claimed, succeeded in respect of the lands in dispute to all the rights, interests and ownership of the Northern Pacific Railroad Company created by the act of Congress of July 2d 1864, 13 *Stat.* 365, *c.* 217. They allege that the claims of the defendants constitute clouds upon their title.

The defendants assert title under the land laws as settlers and purchasers from the United States or grantees of such settlers and purchasers. But the bill alleges that the lands here in dispute are part of the grant to the Northern Pacific Railroad Company and that the Land Department wrongfully and unlawfully permitted the entries under which the defendants severally claim. The Circuit Court dismissed the bill, but without prejudice, except as to all lands here involved for which patents had been issued. 110 *Fed. Rep.* 465.

It seems both appropriate and necessary that the facts be fully stated. That statement we now proceed to make, premising that the present controversy had its origin, as will be presently shown, in conflicting orders or rulings in the Land Department as to what was the eastern terminus of the Northern Pacific Railroad.

By the above act of July 2d 1864, *c.* 217, Congress made a grant of lands to the Northern Pacific Railroad Company in aid of the construction of a railroad and telegraph line from some point on Lake Superior in Minnesota or Wisconsin to some point on Puget Sound with a branch via Columbia River to a point at or near Portland. The act established indemnity limits not more than ten miles beyond the limits of the alternate sections granted. 13 *Stat.* 365.

By a Joint Resolution, approved May 31st 1870, second indemnity limits were established within ten miles on each side of the road, beyond the limits prescribed in the company's charter. 16 *Stat.* 378, *Res.* 67. The effect of this resolution was to allow the company, under the direction of the Secretary of the Interior, to go into second indemnity limits in order to supply any deficiency in lands on its main line or branch.

On the 3d day of July 1882 the company transmitted to the Secretary of the Interior a map of definite location covering the proposed line from Thompson Junction on the St. Paul and Duluth Railroad near Duluth, Minnesota, to Ashland in Wisconsin. That map was duly approved by the Secretary of the Interior, and the lands embraced by it were withdrawn from sale or entry.

By resolution of the Board of Directors of the company, adopted August 28th 1884, Ashland was declared to be the eastern terminus of the road; and that resolution was accepted by the Secretary on December 3d 1884 as establishing such terminus.

The part of the road delineated on the map of definite location was constructed and was duly accepted; and in conformity with the directions of the Secretary the company, the Circuit Court states, filed lists of selections of lands, some in the first and others in the second indemnity limits, in lieu of lands lost to it in its place limits—such lists *including all the lands in controversy in this suit.* But the bill avers that no final action has ever been taken by the Land Department upon such lists; and they have not yet been approved by the Department.

Subsequently, on August 12th 1896, the Secretary of the Interior ruled that Duluth, not Ashland, was the eastern terminus of the railroad, and therefore that the land grant of 1864 did not embrace any lands between Duluth and Ashland. The company's lists of selections were thereupon cancelled by order of the Secretary, and the lands covered by them were thereafter treated by the Department as unappropriated public lands and were opened for sale and entry.

This appears from an official communication addressed by the Commissioner of the General Land Office, with the approval of the Secretary of the Interior, to the Register and Receiver at Duluth. In that communication the Commissioner said: "On August 27th 1896 the Secretary of the Interior rendered a decision wherein he held that the initial point on Lake

Superior or the eastern terminus of the grant to the Northern Pacific Railroad Company was at Duluth, Minnesota, and on December 24th 1896 he approved a diagram prepared by this office showing the eastern terminal of the grant. On January 23d 1897 a copy of so much of said diagram as related to or affected lands within your district was transmitted to you for the use and guidance of your office. The decision of the Secretary aforesaid had the effect of restoring to the public domain all lands lying east of said terminal which had theretofore been withdrawn on account of the grant to said railroad company. Therefore, to the end that all persons interested may have an opportunity to present any claims they may have to any of these lands, you will cause to be published for the period of thirty days, in some newspaper of general circulation in their vicinity, a notice referring to said Secretary's decision which in effect declared that all lands previously withdrawn on account of the grant to the Northern Pacific Railroad Company and lying east of the terminal established at Duluth are restored to the public domain and are subject to disposal at your office."

Under the above ruling of the Secretary as to the eastern terminus, the defendants were allowed to make entries and purchases on the line of the railroad between Duluth and Ashland, despite the company's map of definite location and the lists of selections filed by it with the Secretary. In reference to the action of the Interior Department, the Circuit Court said: "By reason of the erroneous ruling of the Secretary of the Interior as to the location of the eastern terminus of said railroad, and his revocation of his prior approval of lawful selections by the railroad company of indemnity lands, and permitting sales and entries of such selected lands, as unappropriated, he had introduced confusion and conflict in respect to the right to such lands, which was beginning to be litigated in the courts; . . The fact that patents had issued in a few instances would not end such disputes as to the lands so patented, as courts would adjudge the patentee in any case to hold the title in trust for the other party, wherever the other party had clearly the right to the land." 110 *Fed. Rep.* 465, 469.

Such was the situation when Congress incorporated into the body of the Sundry Civil Appropriation act of July 1st 1898, 30 *Stat.* 597, 620, *c.* 546, subdivision, "Surveying the Public Lands," certain provisions relating to the Northern Pacific land grant. As these provisions disclose a scheme or plan for the settlement of the disputes arising out of the conflicting rulings in the Land Department in reference to the eastern terminus of the railroad, and its action in reference to the public lands between Duluth and Ashland, they should all be examined in order to ascertain the intention of Congress. They are therefore here given in full.

By that act—dividing it, for convenience, into paragraphs—it was provided:

"That where, prior to January first, eighteen hundred and ninety-eight, the whole or any part of an odd-numbered section, in either the granted or the indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of the grantee or its lawful successor is claimed to have attached by definite location or selection, has been purchased directly from the United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department, and where purchaser, settler or claimant refuses to transfer his entry as hereinafter provided, the railroad grantee or its successor in interest, upon a proper relinquishment thereof, shall be entitled to select in lieu of the land relinquished an equal quantity of public lands, surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron, or coal, and free from valid adverse claim or not occupied by settlers at the time of such selection, situated within any State or Territory into which such railroad grant extends, and patents shall issue for the land so selected as though it had been originally granted; but all selections of unsurveyed lands shall be of odd-numbered sections, to be identified by the survey when made, and patent therefor shall issue to and in the name of the corporation surrendering the lands before mentioned, and such patent shall not issue until after the survey:

2. "*Provided, however,* That the Secretary of the Interior shall from time to time ascertain and, as soon as conveniently may be done, cause to be prepared and delivered to the said railroad grantee or its successor in interest a list or lists of the several tracts which have been purchased or settled upon or occupied as aforesaid, and are now claimed by said purchasers or occupants, their heirs or assigns, according to the smallest Government subdivision. And all right, title, and interest of the said railroad grantee or its successor in interest in and to any of such tracts, which the said railroad grantee or its successor in interest may relinquish hereunder shall revert to the United States, and such tracts shall be treated, under the laws thereof, in the same manner as if no rights thereto had ever vested in the said railroad grantee, and all qualified persons who have occupied and may be on said lands as herein provided, or who have purchased said lands in good faith as aforesaid, their heirs and assigns, shall be permitted to prove their titles to said lands according to law, as if said grant had never been made; and upon such relinquishment said Northern Pacific Railroad Company or its lawful successor in interest may proceed to select, in the manner hereinbefore provided, lands in lieu of those relinquished, and patents shall issue therefor:

3. "*Provided further,* That the railroad grantee or its successor in interest shall accept the said list or lists so to be made by the Secretary of the Interior as conclusive with respect to the particular lands to be relin-

quished by it, but it shall not be bound to relinquish lands sold or contracted by it or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron, or coal:

4. "*And provided further*, That whenever any qualified settler shall in good faith make settlement in pursuance of existing law upon any odd-numbered sections of unsurveyed public lands within the said railroad grant to which the right of such railroad grantee or its successor in interest has attached, then upon proof thereof satisfactory to the Secretary of the Interior, and a due relinquishment of the prior railroad right, other lands may be selected in lieu thereof by said railroad grantee or its successor in interest, as hereinbefore provided, and patents shall issue therefor:

5. "*And provided further*, That nothing herein contained shall be construed as intended or having the effect to recognize the Northern Pacific Railway Company as the lawful successor of the Northern Pacific Railroad Company in the ownership of the lands granted by the United States to the Northern Pacific Railroad Company, under and by virtue of foreclosure proceedings against said Northern Pacific Railroad Company in the courts of the United States, but the legal question whether the said Northern Pacific Railway Company is such lawful successor of the said Northern Pacific Railroad Company, should the question be raised, shall be determined wholly without reference to the provisions of this act, and nothing in this act shall be construed as enlarging the quantity of land which the Northern Pacific Railroad Company is entitled to under laws heretofore enacted:

6. "*And provided further*, That all qualified settlers, their heirs or assigns, who, prior to January first, eighteen hundred and ninety-eight, purchased, or settled upon or claimed in good faith, under color of title or claim of right under any law of the United States or any ruling of the Interior Department, any part of an odd-numbered section in either the granted or indemnity limits of the land grant to the Northern Pacific Railroad Company to which the right of such grantee or its lawful successor is claimed to have attached by definite location or selection, may in lieu thereof transfer their claims to an equal quantity of public lands, surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron, or coal, and free from valid adverse claim, or not occupied by a settler at the time of such entry, situated in any State or Territory into which such railroad grant extends, and make proof therefor as in other cases provided; and in making such proof, credit shall be given for the period of their *bona fide* residence and amount of their improvements upon their respective claims in the said granted or indemnity limits of the land grant to the said Northern Pacific Railroad Company the same as if made upon the tract to which the transfer is made; and before the Secretary of the Interior shall cause to be prepared and delivered to said railroad grantee or its successor in interest any list or lists of the several tracts which have

been purchased or settled upon or occupied as hereinbefore provided, he shall notify the purchaser, settler or claimant, his heirs or assigns, claiming against said railroad company, of his right to transfer his entry or claim, as herein provided, and shall give him or them option to take lieu lands for those claimed by him or them, or hold his claim and allow the said railroad company to do so under the terms of this act." 30 *Stat.* 597, 620.

The provisions of that act were formally accepted in writing by the Northern Pacific Railway Company on the 13th of July 1898 in writing, and such written acceptance was promptly transmitted by the company to the Secretary of the Interior.

In a case in the Supreme Court of Wisconsin, determined shortly before the act of 1898, it was held, contrary to the ruling of the Interior Department in 1896, that Ashland, and not Duluth, was the eastern terminus of the Northern Pacific Railway. *Northern Pacific Railway Co.* v. *Doherty,* 100 *Wis.* 39. Upon writ of error to this court that judgment was affirmed. *Doherty* v. *Northern Pacific Railway Co.*, and *United States* v. *Northern Pacific Railroad Compony,* 177 *U. S.* 421 and 435.

After the above decisions by this court—which were rendered April 16th 1900—the Secretary of the Interior revoked the order cancelling the company's above lists of selections, and reinstated them. Shortly before those cases were argued here, namely, on January 19th 1900—and apparently to meet the contingency of a reversal by this court of the judgment of the Supreme Court of Wisconsin—the Northern Pacific Railway Company made conveyances with warranty to the plaintiffs Humbird and Weyerhaeuser, of all the lands, aggregating more than 10,000 acres, the title to which is here in dispute. As appears from the record, these conveyances were made after the Land Department had issued regulations to facilitate the adjustment of claims under the act of July 1st 1898. It should be recalled here that the lands covered by those conveyances were placed on the above list of selections filed by the railroad company, but those lists had not then nor have they since received the approval of the Secretary.

It is contended by the plaintiffs that the result of the above decisions in this court, adjudging the eastern terminus of the Northern Pacific Railroad to be at Ashland, Wisconsin, and not at Duluth, ~~Wisconsin~~, was that the nnesota odd-numbered alternate sections between Duluth and Ashland, on either side of the railroad, as definitely located, to the extent and within the limits prescribed, and not excluded from the grant of July 2d 1864, were to be deemed public lands, from which that grant could be supplied, and to which neither the defendants nor their grantors *after* the definite location of the road as shown by the company's accepted map of location could have acquired any valid title, by entry or settlement, or by purchase, except from the railroad grantee, and that the defense cannot be main-

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tained without violating the rights that were *vested* in the company *in virtue of* such definite location.

The defendants, of course, combat this view of the rights of the parties, and insist that they are fully protected in their claims by the act of 1898, all the provisions of which, as we have seen, were accepted by the railroad company.

In the statement accompanying the certified questions it is set forth that prior to the passage of the act of July 1st 1898 the Secretary of the Interior had, pursuant to his original ruling as to the eastern terminus of the railroad, caused patents to be delivered to defendant settlers or their grantors for about 3,400 acres of the lands involved in this suit; that at the time of the passage of that act about 2,800 acres of the lands in question had been entered by defendant settlers or their grantors prior to January 1st 1898, but no patents therefor had been issued; that after January 1st 1898 the settlers or their grantors were permitted to enter about 5,000 acres of the lands here in controversy. The situation is thus described in the statement sent up by the Circuit Court of Appeals: Of the lands claimed by the plaintiffs as successors in interest of the Northern Pacific Railroad Company about 3,400 acres thereof were held by the appellees under patents issued by the Government prior to July 1st 1898; for the residue of the lands the settlers held final receipts and final certificates, such final receipts and final certificates, as respects about 5,000 acres, being for tracts entered subsequent to January 1st 1898. In reference to the lands for which final receipts and certificates have been issued nothing, so far as appears, remains to be done by the Land Department except the issuing of patents.

The relief sought is a decree declaring, among other things, that the lands described in the exhibit attached to the bill and all the timber standing or lying thereon belong to the plaintiffs; that the entries, locations, final certificates, land office receipts and patents, under which the several defendants claim, be adjudged to be void and removed as clouds from the titles of the plaintiffs, and the defendants severally enjoined from asserting any title by virtue thereof; and that such of the defendants as hold patents may be declared to hold as trustees for the plaintiffs in respect of any title conveyed by such patents, or any timber, cut or uncut, on such lands.

The questions propounded to this court by the Circuit Court of Appeals are these:

"Is the act of July 1st 1898 applicable to the determination of the rights of the parties to the 3,400 acres of land which were patented to the appellees or their predecessors in interest prior to the adoption of the act of July 1st 1898?

"Has the Circuit Court of the United States for the District of Minnesota, or any court, jurisdiction as respects the lands in controversy entered subsequent to January 1st 1898, and for which the settlers hold final receipts or certificates, to adjudicate the rights of the parties to this action in respect to said lands in advance of the issuance of patents therefor by the executive branch of the Government, or should the courts decline jurisdiction until the Government has divested itself of the legal title to the lands by the issuance and delivery of patents?"

It is appropriate at the outset to refer to certain allegations of the bill which bring the determination of the case within a very narrow compass and make it unnecessary to consider some matters referred to by counsel. After setting out in detail the various steps taken by the railroad company to acquire a right to the lands in dispute, the bill alleges that "but for the *vested* rights" of the Northern Pacific Railroad Company and its grantees the several tracts of land in question would have been unappropriated public lands open to the several kinds of entries or location made with respect to them, severally; also, that "the several applications and proceedings with respect to the said several entries were in due form, and regularly conducted, as required by law, and, *in the absence of the vested rights of the said Northern Pacific Railroad Company and its grantees in the said premises,* would have been operative and effectual *to invest the several entrymen of said lands with complete equitable title thereto,* each of such entries and locations having been finally receipted for, allowed and approved by the proper land officers of the United States; the only act remaining for the United States or its officers to perform with respect to such entries being the issuance of the patent in cases where the patent has not already issued;" and that all of the said entries and locations of lands referred to in the exhibit filed with the bill were allowed, and the final certificates (and so far as issued the patents) issued therefor "under a mistake of law founded upon a certain erroneous ruling by the Secretary of the Interior, to the effect that the said Northern Pacific Railroad Company, and their successors in interest, were not entitled to any lands by virtue of said act of Congress, approved July 2d 1864, and said joint resolution approved May 31st 1870, granting lands to said Northern Pacific Railroad Company, east of that point on the line of said Northern Pacific Railroad where the same crosses the line of the St. Paul and Duluth Railroad, known as Thompson Junction."

Obviously, the first inquiry should be as to the object and scope of the act of 1898. Upon that point we do not think any doubt can be entertained, if the words of the act be interpreted in the light of the situation, as it actually was at the date of its passage. Here were vast bodies of land, the right and title to which was in dispute between a railroad company holding a grant of public lands, and occupants and purchasers—both sides claiming under the United States. The disputes had arisen out of conflicting orders or rulings of the Land Department, and it became the duty of the Government to remove the difficulties which had come upon the parties in consequence of such orders. The settlement of those disputes was therefore, as the Circuit Court said, a matter of public concern. If the disputes were not accommodated, the litigation in relation to the lands would become vexatious, extending over many years and causing great embarrassment. In the light of that situation Congress passed the act of 1898, which opened up a way for an adjustment upon principles that it deemed just and consistent with the rights of all concerned—the Government, the railroad grantee, and individual claimants. The railroad company evinced its approval of this action of the legislative department by a prompt acceptance of the act, in its entirety. By such unqualified acceptance the railroad company agreed that, so far as it had any claim to the lands in dispute, whatever the act of Congress required to be done might be done.

Promptly after the passage of that act the Land Department set about to administer its provisions, and to that end, as we have said, issued regulations for the guidance of all concerned.

During the progress of this work of administration, the railroad company, by conveyances to the present plaintiffs, assumed to pass such interest as it had in the lands here in question, with the effect—it is now claimed by the plaintiffs—to withdraw or exempt all the lands so sold from the operation of the act. The plaintiffs rest this claim upon that part of the act providing that the railroad grantee or its successor in interest "shall not be bound to relinquish lands sold or contracted by it or lands it uses or needs for railroad purposes, or lands valuable for stone, iron, or coal." (See above Par. 3.)

We have seen that the act (Par. 1 above) made it the duty of the Secretary of the Interior to ascertain from time to time, and cause to be prepared and delivered to the railroad grantee or its successor in interest, a list or lists of the several tracts purchased, settled upon or occupied, and claimed, at the date of the act, by such settlers, purchasers or occupants, their heirs and assigns, according to the smallest Government subdivisions. And the act provided that the railroad grantee or its successor should accept said list or lists "as conclusive, with respect to the particular lands to be relinquished by it." The contention of the plaintiffs, stated more fully, is, in effect, that it was competent for the company, notwithstanding its acceptance of the act, to take out of its operation any lands embraced by its terms, by simply selling or contracting to sell them before the delivery to it or to its successor in interest of the lists above mentioned. In other words—for the contention comes to that—the railroad company, so far as the act of 1898 was concerned, could, notwithstanding the acceptance of its provisions and on the day after such acceptance, have sold or contracted to sell its right, title and interest in and to all the lands embraced by those provisions. This would have left no lands whatever to which the act could apply. Such a result would have left unsettled all the disputes relating to any lands which the company chose, in its own interest, to sell while the Land Department was proceeding under the statute. We do not believe that Congress intended that it should be in the power of the railroad company in any such mode to defeat the operation of the act. Congress, manifestly, had reference to the situation as it was when the act of 1898 was passed.

If any rights had become vested in the Northern Pacific Railroad Company which could not, against or without its consent, be affected by an enactment like that of 1898, then the objection to legislation, on the ground that it interfered with vested rights, was waived by the acceptance of the act by its successor in interest; for it was entirely competent for the latter company, if it succeeded to all the rights of the railroad grantee, to agree to such a settlement as that devised by Congress. The rights acquired by the definite location of the road, and any selection of lands based thereon, became, upon the acceptance of the act, and so far as that company was concerned, subject to such settlement as the Land Department might legally make under that act. It could not by any sale or contract, made after the acceptance of the act, interfere with the full execution of its provisions. And the plaintiffs who claim to have purchased from the successor in interest of the railroad grantee can occupy no better position than the company from which they purchased. They were in a sense purchasers *pendente lite;* for the Secretary of the Interior was, at the time, as he is now, engaged in administering the act of Congress. By him or under his direction must be ascertained the facts upon which depend the inquiry whether the lands in question are within the indemnity limits of the land grant to the railroad company and so situated that a right to them attached by reason of the definite location of the road. He must also inquire whether such lands were purchased, by the respective defendants, directly from the United States, or were settled upon or claimed in good faith by qualified settlers under color of title or claim of right under a law of the United States or ruling of the Interior Department, and whether the purchaser, settler or claimant refuses to transfer his entry. Upon these facts also depends the right of the railroad grantee or its successor in interest (its rights being relinquished as provided in the act) to select in lieu of the lands relinquished an equal quantity of surveyed or unsurveyed public lands, not mineral or reserved, and not valuable for stone, iron or coal, and free from any adverse claim, or not occupied by settlers at the time of such selection, situated within any State or Territory into which the railroad grant extends.

Now it is sought, in advance of final action by the Land Department in execution of the act, to have it adjudged, *as between the parties to this* *suit*, that the lands in dispute, claimed by the defendants, cannot properly be placed on the lists which the Secretary may deliver to the railroad grantee or its successor in interest. But that is a question the solution of which depends, in part at least, on facts within the province, primarily, of the Secretary of the Interior to find. In short, he, and he alone, must ascertain the facts which enter into the question as to what lands are to go on the lists to be delivered to the railroad grantee or its successor in interest. The court should not, by any decree, as between parties who have no contract relations with each other, attempt indirectly to control the authority and discretion of that officer to determine what lands shall and what lands shall not be included in the lists to be prepared under his direction. The plaintiffs cannot invoke the aid of the court to have these questions concluded, even as between them and the defendants, by an admission made in their bill for the purposes of this case, that the final certificates and final receipts held by the respective defendants will entitle them to the lands they claim but for the "vested" rights acquired by the railroad company in virtue of the definite location of its road. The court should not assume that they are embraced by the act, in order simply that it may have an opportunity, as between the present parties, to decide a question of law, which cannot appropriately arise until at least all the facts are ascertained by the Land Department and final action is taken under the statute of 1898. Although it may be true, as alleged in the bill, that the defendants, not holding patents, have received and hold final certificates or final receipts, and that, so far as they are concerned, nothing more remains to be done in the Department except to issue patents, yet it is in the power of the Department, even after decree here, in this suit, to reopen the case as to each defendant of that class, and, sufficient grounds existing therefor, recall or cancel such certificates or receipts. The whole matter, in respect of the lands in dispute, is yet in the hands of the Department undisposed of finally under the act of 1898. Congress intended that the Department should, within the limit and according to the rules prescribed by the act of 1898, settle the disputes that had arisen between the railroad grantee and settlers, although, after the matter has passed beyond the jurisdiction of the Department, such settlements may become the subject of judicial inquiry for the protection of the rights of parties against any error of law committed by the Department.

Those views are in entire accord with the former decisions of this court. In *Johnson* v. *Townsley*, 13 *Wall.* 72, 87, it was said: "This court has at all times been careful to guard itself against an invasion of the functions confided by law to other departments of the Government, and in reference to the proceedings before the officers intrusted with the charge of selling the public lands it has frequently and firmly refused to interfere with them in the discharge of their duties, either by mandamus or injunction, so long as the title remained in the United States and the matter was rightfully before those officers for decision. On the other hand, it has constantly asserted the right of the proper courts to inquire, *after the title had passed from the Government*, and the question became one of private right, whether, according to the established rules of equity and the acts of Congress concerning the public lands, the party holding that title should hold absolutely as his own, or as trustee for another." So, in *Marquez* v. *Frisbie*, 101 *U. S.* 473, 475: "We have repeatedly held that the courts will not interfere with the officers of the Government while in the discharge of their duties in disposing of the public lands, either by injunction or mandamus. . . After the United States has parted with its title and the individual has become vested with it, the equities subject to which he holds it may be enforced, but not before. . . We did not deny the right of the courts to deal with the possession of the land prior to the issue of the patent, or to enforce contracts between the parties concerning the land. But it is impossible thus to transfer a title which is yet in the United States." What was said in the case just cited as to the power of the court to interfere, in certain cases, in advance of the issuing of the patent, was no doubt in the mind of the Circuit Court when, in its opinion in this case, it said: "It is unnecessary to decide whether a case may not arise, which, even while the disputed question as to the rights of contesting parties to a tract of public land is pending or cognizable before the Land Department, a court of equity may properly interfere by injunction at the suit of one of the claimants, to prevent the other claimant from despoiling the land by waste, and appropriating its substantial value, by denuding it of all its merchantable timber, before any final decision upon the disputed claims by the Land Department, which is only rendered by issuing the patent."

So, again, in *United States* v. *Schurz*, 102 *U. S.* 378, 395: "The Constitution of the United States declares that Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States. Under this provision the sale of the public lands was placed by statute under the control of the Secretary of the Interior. To aid him in the performance of this duty, a bureau was created, at the head of which is the Commissioner of the General Land Office, with many subordinates. To them, as a special tribunal, Congress confided the execution of the laws which regulate the surveying, the selling, and the general care of these lands. Congress has also enacted a system of laws by which rights to these lands may be acquired, and the title of the Government conveyed to the citizen. This court has with a strong hand upheld the doctrine that so long as the legal title to these lands remained in the United States, and the proceedings for acquiring it were as yet *in fieri*, the courts would not interfere to control the exercise of the power thus vested in that tribunal. To that doctrine we still adhere." As late as ***Bockfinger*** v. ***Foster***, 190 *U. S.* 116, 126, we reaffirmed the principle, "that the courts will not interfere with the Land Department in its control and disposal of the public lands, under the legislation of Congress, so long as the title in any essential sense remains in the United States."

These principles are applicable to the particular scheme devised by the act of 1898 in reference to the lands in dispute. When the Land Department shall have done all that it can do in execution of the act of Congress, as to any particular lands in dispute, it will be time enough for interested private parties claiming an interest in them to invoke the aid of the courts for the determination of such questions of law as may arise out of the action of the Department. It is true that no order is asked here that will directly or in terms operate upon the Land Department. But a decree is asked, as between the parties now before the court, which must necessarily control or affect the action of the Department in respect of matters committed to it by Congress. Such interference by the court, although between private claimants only, would be inappropriate, especially as to lands covered by the act of 1898.

What has been said is peculiarly applicable to the unpatented lands in dispute. It is equally applicable to lands patented both before and after the passage of the act, if such lands are *in dispute* and *belong to either of the classes described in the act of* 1898. We agree with the Circuit Court that the act "gives the option to keep or relinquish the disputed land to the individual claimant in every instance. If he elects to retain that land, it is to be listed by the Secretary in lists to be furnished to the railroad claimant, who must relinquish, and whose consent to this was given by the acceptance of the act." In case of such relinquishment by the railroad company, it acquires a right to select other lands in place of those retained by the individual claimant. If the individual claimant, having a patent, elects to surrender his right, then he must reconvey to the United States, and will then be entitled to select other lands in lieu of those surrendered. So that the statute embraces both patented and unpatented lands, in respect of which the railroad company or its successor in interest claims that a right thereto attached by the definite location of its road or by selection, provided they are also such lands as were originally "purchased directly from the United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department." The duty of a court of equity not to interfere with parties in the prosecution of their rights under the act, whereby the execution of its provisions in advance of final action by the Department would be embarrassed by judicial decision, is quite as imperative in cases of the patented lands in dispute as in the cases of unpatented lands. This view is not at all in conflict with those cases in which it has been held that after a patent issued for public lands the only remedy for one who claims the land, as against the patentee, is to bring a suit against the person holding the patent, and obtain a decree declaring the patentee a trustee for the party suing. This general principle does not apply to cases embraced by the act of 1898. That act is peculiar in its provisions, and contemplates that the individual claimant of one of the classes described in it may hold the land patented to him, if he elects to retain it, and that the railroad grantee or its successor in interest can be made whole by taking lieu lands in place of those claimed in virtue of definite location or selection.

For the reasons stated, neither the claim of vested rights in behalf of the railroad grantee, nor the contention that the lands in dispute, having been sold to the plaintiffs, were not for that reason embraced by the act of 1898, furnishes any ground for interference by a court of equity or for the granting of the relief asked.

This conclusion is fortified, if not absolutely demanded, by another consideration, namely, that no title to indemnity lands is vested until a selection be made by which they are definitely ascertained, and the selection made *approved by the Secretary of the Interior.* This principle is firmly established. A full statement of it is found in *Wisconsin Central R. R.* v. *Price County*, 133 *U. S.* 496, 511. The court there said: "He [the Secretary] was required to determine, in the first place, whether there were any deficiencies in the land granted to the company which were to be supplied from indemnity lands; and, in the second place, whether the particular indemnity lands selected could be properly taken for those deficiencies. In order to reach a proper conclusion on these two questions he had also to inquire and determine whether any lands in the place limits had been previously disposed of by the Government, or whether any pre-emption or homestead rights had attached before the line of the road was definitely fixed. . . *Until the selections were approved* there were no selections in fact, only preliminary proceedings taken for that purpose; *and the indemnity lands remained unaffected in their title.* Until then the lands which might be taken as indemnity were incapable of identification; the proposed selections remained the property of the United States. The Government was, indeed, under a promise to give the company indemnity lands in lieu of what might be lost by the causes mentioned. But such promise passed no title, and, until it was executed, created no legal interest which could be enforced in the courts." In *New Orleans Pacific Railway* v. *Parker*, 143 *U. S.* 42, 57, it was said: "As to lands within the indemnity limits, it has always been held that no title is acquired until the specific parcels have been selected by the grantee and approved by the Secretary of the Interior." And in *Michigan Land & Lumber Co.* v. *Rust*, 168 *U. S.* 589, 592–3, the court said: "Generally speaking, while the legal title remains in the United

States, the grant is in process of administration and the land is subject to the jurisdiction of the Land Department of the Government." To the same effect are *Sioux City &c. Railroad* v. *Chicago, Milwaukee &c. Railway*, 117 *U. S.* 406, 408; *United States* v. *Missouri &c. Railway*, 141 *U. S.* 358, 374; *Brown* v. *Hitchcock*, 173 *U. S.* 473, 479; *Kansas Pacific Railroad* v. *Atchison Railroad*, 112 *U. S.* 414, 421; *Barney* v. *Winona & St. Peter Railway*, 117 *U. S.* 228, 232; *Grinnell* v. *Railroad Co.*, 103 *U. S.* 739; *St. Paul &c. Railroad* v. *Winona & St. Peter Railroad*, 112 *U. S.* 720, 731; *Cedar Rapids & Missouri River Railroad* v. *Herring*, 110 *U. S.* 27.

Now, the lands here in dispute and claimed by the plaintiffs as grantees of the Northern Pacific Railway Company (the alleged successor in interest of the Northern Pacific Railroad Company) are lands admittedly within indemnity, as distinguished from granted or place, limits. The mere filing of lists of selections, after the acceptance of the map of definite location of the railroad line between Duluth and Ashland, gave the company no such title as could be enforced by the courts in a suit between private parties. It is true the Government was under a promise to give the railroad company lands in the indemnity limits to supply losses in place limits. But, as adjudged in the above cases, that promise passed no title. The promise will no doubt be fulfilled by the Government in due time, and in its own way. The selections not having been approved by the Secretary, the title remains in the Government. So that the plaintiffs, having no greater rights than those of the railroad grantee or its successor, has no such interest in the particular lands, specified in the railroad company's lists of unapproved selection, as entitles it, while the title remains in the United States, and while these lands are being administered by the Land Department, to ask a court of equity to decide, as between them and the defendants, that the latter could not by any entry or purchase acquire an interest after the acceptance by the Secretary of the railroad's map of definite location.

But it is suggested that the final action of the Department may be indefinitely postponed, to the great injury of the railroad grantee and those claiming under it. Delay in such matters was a contingency which the alleged successor in interest of the railroad grantee must have taken into account when accepting the act and assenting to the plan of settlement embodied in it. The Land Department was not required to complete its administration of the statute within any designated time. The act, upon its face, directs that the required lists be prepared and delivered to the railroad company "as soon as conveniently may be done." It cannot be assumed upon this record that the Department has not progressed with the work of administration as rapidly as all the circumstances and its convenience permitted. Even if the fact be otherwise, it is not for a court of equity, by its decree to decide, in the first instance, that the selections made by the railroad company of lien lands shall be approved by the Secretary, or to decide what lands should be on the lists required to be furnished to the railroad granted under the act of 1898; or to control directly or indirectly the work which Congress, with the assent of the railroad grantee, has committed to one of the Departments of the Government, or by an order interfere with the prosecution by the defendants of their claims under the act of 1898.

We are of opinion that the bill should have been dismissed upon the ground that a court of equity should not, in advance of the final action by the Secretary of the Interior in respect of lands embraced by the act of 1898 interfere with the regular and orderly administration of its provisions by means of a decree directed against claimants under that act. And without now expressing any opinion as to what questions may be raised by a claimant after such final action by the Land Department under that act, we adjudge that such dismissal must be without prejudice to any suit that may, according to established principles, be rightfully instituted by a claimant after the jurisdiction of the Department in respect of any particular lands has ceased. Thus modified, the decree of the Circuit Court must be affirmed.

It is so ordered.

Mr. Justice BREWER took no part in the decision of this case.

True copy.

Test:

Clerk Supreme Court, U. S.